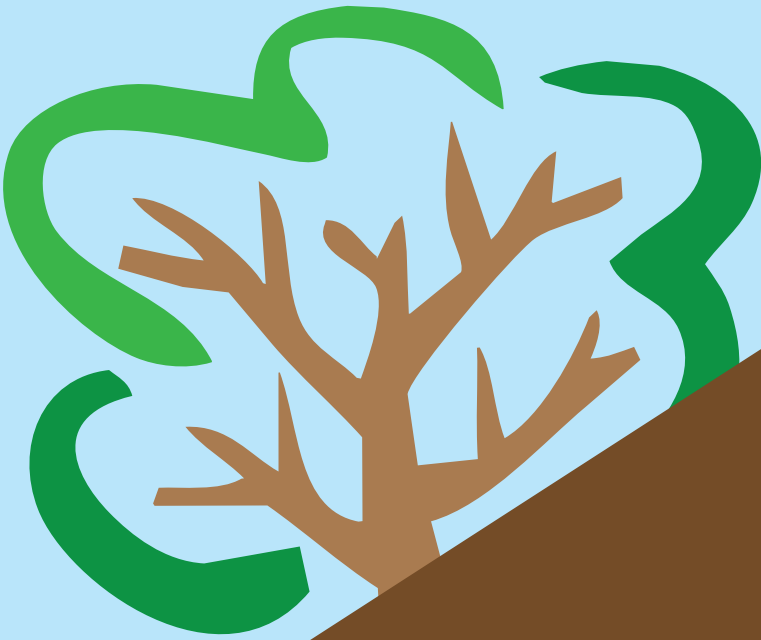




Oregon Renters' Handbook

OSPIRG

www.ospirgstudents.org

10th Edition

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Foreword

In the United States, you can protect your legal rights only if you know what those rights are. Unfortunately, many people do not. Our schools do not educate students on the rights they will possess as adults. The law itself is set forth in dense statute books filled with thousands of provisions, making it hard for citizens to find specific provisions that matter to them. To make matters worse, the law is often very complex, filled with technical legal jargon. As a result, many citizens are not aware of the rights they possess.

The latest edition of the *OSPIRG Renters' Handbook* seeks to address this problem. It provides a critical public service by clearly and concisely explaining the rights and responsibilities of tenants and renters, so people who rent know exactly where they stand. As someone who rented for years, from both good landlords and bad, I've learned the importance of understanding these rights. For this reason, I believe The *OSPIRG Renters' Handbook* is a first-rate resource for the people of Oregon.

As Attorney General of Oregon, I will fight hard to protect the rights of all Oregonians. I look forward to serving you.

John Kroger
Attorney General
State of Oregon

About OSPIRG

The Oregon Student Public Interest Research Group (OSPIRG) is a statewide, student-directed and student-funded organization with chapters on college campuses around the state.

Our mission is to engage the campus community in efforts to address the big social problems of our time. By doing so, we help fulfill our colleges' teaching, research and public service missions—increasing civic participation, clarifying how to address important issues, and helping advance the economy and environment of our great state.

To accomplish our mission, we harness the energy and idealism of students on campus with a staff of full-time professionals based in Portland, Salem and Washington DC. Together, we have trained hundreds of thousands of students in how to solve social problems and made a huge difference for Oregon!

Look us up at www.OSPIRGstudents.org.

Acknowledgements

10th Edition

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Introduction

The 10th Edition of the Renter's Handbook paraphrases and elaborates on the Oregon Residential Landlord Tenant Act (ORS 90.100 to 90.875). Prepared by Oregon Student Public Interest Research Group (OSPIRG), the scope of the handbook does not cover mobile, manufactured or floating home parks, and it should not be used as a substitute for the advice of an attorney.

The Residential Landlord Tenant Act (hereinafter referred to as the Act) went into effect on October 5, 1973. All rental agreements are covered by the Act except residency in:

- public or private institutions for medical, geriatric, educational, counseling, religious or other services (university off-campus housing is covered);
- a dwelling which the occupant is buying (but a lease option is covered before the option is exercised);
- occupancy in a fraternal or social organization in the portion of a structure which is

operated for the benefit of the organization;

- transient occupancy in a hotel or motel of less than 30 days, where rent accrues daily and is collected no more than 6 days in advance, and which has daily or every other day maid and linen service
- a dwelling owned by the occupant's employer if residency is contingent on employment in and about the premises;
- an owner-occupied condominium;
- or a working farm.

The remedies provided by the Act are administered so that an injured party may recover appropriate damages. Both landlords and tenants have an obligation to perform every act in "good faith," in other words, honestly. Each party also has a duty to do what it takes to reduce damages as much as possible.

Renting is a two way street. Renters and landlords may unknowingly jeopardize their rights by not fulfilling their legal responsibilities. Both par-

ties need to work together to establish a smooth, comfortable arrangement.

Note  *References to the Act are made throughout the Handbook in the form of citations of the Oregon Revised Statutes. For instance, a paragraph ending with “(90.300(4)(b))” refers to paragraph “b” of subsection 4 of section 90.300. If a dispute arises, it helps to be able to cite the law on which you are relying.*

The Oregon Revised Statutes and other law publications are available for purchase from the

Office of Legislative Counsel at www.lc.state.or.us, and are also available at many public libraries and sometimes at the law libraries of the county courthouses or local law schools.

Online, you can read Oregon Revised Statutes text produced from material provided by the Legislative Counsel Committee of the Oregon Legislative Assembly at www.leg.state.or.us/ors. It is important to note that the official record copy is the printed published copy of the Oregon Revised Statutes. The online text is not the official text of Oregon law, and may contain errors.

Where to Look

It is usually a good idea to look at many rental properties before you choose one, even if you like the first one you see. There are lots of ways to find a suitable place to rent.

Once you have located a unit that you think will be appropriate, take your time to thoroughly consider everything about the rental unit. Does the landlord seem fair and reasonable? Are you confident that they will keep the place in good repair? What do the neighbors and other tenants say about the reliability of the landlord?

Newspapers

The classified ads in local and campus newspapers are a valuable resource for finding a place to live. The Sunday edition of your local daily paper usually carries the most ads. Good places are rented quickly, so it is a good idea to pick up the paper early in the day to increase your chances of being first in line to contact the landlord. Many

newspapers also have additional classified listings online that are not carried in the print edition.

Online Bulletin Boards

A popular resource for finding rental properties is online bulletin boards such as Craigslist. In addition to browsing posted listings, you may post under categories such as “Housing Wanted” and describe your needs and allow landlords or roommate seekers to respond. Keep in mind that most online sources are not regulated and scamming may occur. Use common sense to avoid potential problems. Depending on the area in which you want to live, timing can be critical. It is a good idea to use websites that are updated regularly and to check them often so that you can be among the first to look contact a poster.

Tip  *If you don't have internet access at home, check your local library. Most public libraries provide computer terminals with internet access free of charge.*

"Offline" Bulletin Boards

Another useful resource for rental seekers is bulletin boards found on many college campuses and retail stores, such as coffee shops, book stores, and local groceries.

College Housing Offices

Most colleges have housing offices with listings of apartments and houses for rent around campus.

Signs

Many landlords will not advertise, but will place signs in their windows or lawns instead. This is an especially helpful way to find a place to live if you know the specific area you are looking for. Driving, biking, or walking around a neighborhood you would like to live in is a great way to find rental opportunities. Be sure to bring a notebook so you can take notes and write down phone numbers for the places you see as you go.

Property Management Firms

Many apartments and houses

are managed by Property Management Firms, who handle renting for owners who may or may not live in the area. Some are large and handle multiple properties, while others handle single family homes and smaller complexes. If you respond to an ad for a rental and it is already rented, ask if you are calling a property management firm and if they have any other vacancies.

Word of Mouth

Many dwellings may rent before they are ever advertised. Mention to your friends and colleagues that you are looking for a place to live. They may be able to alert you to upcoming vacancies. They may also be able to tell you if a landlord is a responsible and fair one.

Affordable Housing

There are some units of affordable housing available, where tenants pay about a third of their income for rent. You can find affordable housing providers in your area by looking in the blue pages of the phone book

for “Housing Authority”, or ask your local social service agency if there is a Community Development Corporation (non-profit landlord) in your area.

Credit Checks

Many landlords will check your credit history to see if you typically pay your bills on time.

Tip  *Tenants should get a copy of their own credit report to verify that everything included is accurate before they apply for housing. You are entitled to one free credit report per year from each agency. (See Appendix C for contact information and instructions)*

Credit reporting agencies collect information about you from various sources. Such information may stay on file for up to 10 years and may include:

- your name, current and former addresses, Social Security Number, birthdate, current and former employers, type of job, income, spouse information, and whether you rent or own your home;
 - dates that you opened your credit accounts, or took out a loan, and the terms of the accounts;
 - attempts to get credit, car loans, insurance, mortgages, etc.;
 - account balances, past due amounts, how often you pay late;
 - your biggest loan ever received and any limits on your credit card accounts;
 - bankruptcies, lawsuits, court judgments, liens, write-offs or repossessions.
- If you are refused housing, or anything else, because of information on the credit report, you may obtain a free copy of your report by requesting it from the credit reporting agency (in addition to your annual free credit report). You may also submit a personal letter of explanation to your file. Be careful in what you say when you do this, and make sure you take responsibility for any mistakes you may have made. You can also dispute any items that you don't think

are supposed to be there. If the landlord charged an initial screening fee, he or she should have already provided the name and address of the credit bureau as required under the Federal Fair Credit Reporting Act, otherwise see Appendix C for agency contact information.

Tenant Screening Services

Some landlords use a tenant screening service to help them select tenants. These services not only have access to your credit history, but may also be linked to a database that can access the courts records of evictions, divorces and small claims activities.

Landlords must give tenants a sheet with their screening criteria before charging a screening fee. Be sure that you can pass the criteria before paying an application or screening fee.

If you know that you won't meet the criteria, but have good reasons why you don't meet them,

ask if the landlord will consider your explanation. Many landlords will adjust their criteria for an honest explanation. You can also ask if there is anything you can do to increase your chances. For example, sometimes offering additional references can offset a negative reference from a past landlord. The landlord may, however, charge an additional deposit for the added risk.

Tenants should be honest and fill out all applications completely, neatly and accurately. Landlords can reject an application that is incomplete, inaccurate or falsified. In some situations, they may also end a rental agreement after the tenant moves in if they find that the application contained false information.

If a landlord denies an application for a rental agreement based in whole or in part on a tenant screening company or consumer credit reporting agency report on that applicant, the landlord must notify the applicant of that fact at the same

time that the landlord notifies the applicant of the denial. If a tenant is rejected because of a credit report, the landlord's only obligation is to tell the tenant the name and address of the agency.

Note *It is legal to reject a tenant simply because the tenant has been evicted in the past.*

Application Fees

A landlord may charge a fee to cover the cost of processing the application, including running a background or credit check on potential tenants. (90.295)

The landlord may not charge an application fee unless they give a written notice of:

- The landlord's screening or admission criteria;
- The applicant's right to dispute the information obtained;
- The process that the landlord typically will follow in screening the applicant, including whether the landlord uses a

tenant screening company, credit reports, public records or criminal records or contacts employers, landlords or other references;

- The cost of this process.

Before charging a screening fee, the landlord must give the applicant an estimate of the number of rental units available, or which will be available in the near future, which are the type of unit and in the area the applicant is looking for. The landlord must also disclose the approximate number of applications previously accepted and remaining under consideration for those units.

An application fee cannot be charged if there is not a rental unit available at the current time or in the near future, unless the applicant agrees in writing to pay such a fee.

Application fees should be no more than the average, actual costs for screening. If, for any reason, the landlord does not perform the screening, they

must refund the fee within a reasonable time.

\$Penalty *The tenant may sue in small claims court for the amount of the fee, plus \$100 penalty and court costs if the landlord does not provide the applicant with a screening disclosure and fails to refund the screening charge to the applicant within a reasonable amount of time.*

Reservation Deposit

If the landlord approves an application and an agreement to rent is reached, the landlord may require a deposit to ensure that the applicant will sign a rental agreement and move into the unit. (90.297(2))

The landlord must either refund the deposit when the tenant

moves in, or apply it to the security deposit or first month's rent. The landlord must give the applicant a written statement of the terms of the agreement regarding the deposit, as well as how the deposit will be refunded or retained.

\$Penalty *If the rental agreement is not signed because of the applicant, the landlord may retain the deposit.*

If the rental agreement is not signed because of the landlord, they have 4 days to refund the deposit by making it available at the landlord's place of business, or by mailing it first class. Failure to do so entitles the tenant to the amount of the deposit plus \$100.

Fair Housing laws protect you from discrimination by landlords, managers, agents, owners, and neighbors.

Federal Law

The federal Fair Housing Act prohibits discrimination in any housing transaction on the basis of race, color, sex, family status, religion, national origin or mental or physical disability.

Oregon Law

In addition to the above, Oregon's fair housing laws prohibit discrimination on the basis of marital status, sexual orientation, or source of income (provided the source is not illegal or criminal). (659A.421)

Note *Landlords may, however, reject a couple who are unmarried, unrelated, and of the opposite sex if the rental requires the use of a common bath or bedroom. (659A.421(6))*

Many cities and counties included further protections. For example, in addition to the federal and state fair housing protections listed above, it is also illegal to discriminate because of your age over 18 in Multnomah County, Benton County, Beaverton, Bend, Corvallis, Eugene, Hillsboro, Lincoln City, Portland, Salem and Springfield. The Fair Housing Council of Oregon maintains a useful chart of such fair housing protections that is available in this guide (see Appendix E).

The fair housing laws exist to prevent the unfair treatment of protected classes by landlords. Fair landlords apply the same criteria when screening and working with all types of tenants. For example, a family with children that does not meet the minimum income level set by a landlord for all applicants would not be discriminated against if the landlord denied the application.

Tenants With Disabilities

A “disability” is a physical or mental impairment which substantially limits one or more of a person’s functions, such as caring for oneself, doing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and/or working.

It is illegal to discriminate based on mental or physical disabilities. It is also illegal to discriminate against people with disabilities because they have a hearing-ear dog or seeing-eye dog or other assistance animal, or to charge an additional non-refundable fee or deposit for the animal. (346.690).

These protections also make it illegal to discriminate because a person is afflicted with AIDS or HIV.

Note *Landlords may not disclose if an occupant or former occupant is infected with or has died from AIDS or HIV.*

Other state and federal laws expand the rights of tenants with disabilities so that landlords must make “reasonable” accommodations in rules, policies, practices, and services as necessary to allow a person with a disability equal opportunity to use and enjoy a dwelling. (Civil Rights of Disabled People, (659A.145) and the Federal Fair Housing Act, (42 U.S.C. 3601 et. seq.))

Landlords must also permit reasonable modifications to the premises, at the tenant’s expense, to make the dwelling usable for the tenant. The tenant may be required to restore the premises to their original condition at the end of the tenancy only if it is reasonable to do so. For example, a wheelchair ramp may have to be removed, but widened doors would not have to be narrowed.

Although federal regulations forbid requiring a deposit to make these changes, they permit the landlord to require the tenant to open an “escrow” account, with interest going to the

tenant, to ensure that there are funds to pay for the removal of any modifications at the end of the tenancy.

Note *These protections do not protect a person who currently uses illegal or controlled drugs, or who has been convicted for the illegal distribution or manufacture of drugs. They do, however, protect those who are recovering from an addiction. Landlords should use the same criteria that they use on all other applicants concerning threats to the health, safety, or property of the premises and occupants.*

Right to Privacy

Applicants do not have to disclose their type of disability unless they are seeking housing specifically intended for people with disabilities. Landlords are not entitled to ask for or find out details of the specific disability of an applicant or tenant.

Familial Status

The same state and federal laws prohibit discrimination of families with children (e.g. because the tenant has a child, has or is securing legal custody of a child, or is pregnant). A child is a person under 18 years of age.

Renting to Minors

State law says that a contract with someone under 18 is legal and binding only in the area of housing and utilities. It is not required by law, but landlords may choose to rent to certain minors, defined as someone who is:

- an unemancipated and unmarried person living apart from their parents or legal guardians;
- 16 or 17;
- Under 16 and the parent in physical custody of a child(ren);
- Under 16 and pregnant with a child who will be living in their physical custody.

Minors should be held to the same screening, application, and

responsibility standards as all other applicants and tenants.

Senior Housing

An exception to the protection for familial status allows landlords to have “older person housing,” which is:

1. Publicly funded for elderly persons as defined in the state or federal programs;
2. Intended for and solely occupied by persons 62 or older; or
3. Intended and operated for occupancy by households including at least one person 55 or older, but only if:
 - a. at least 80 percent of the units are occupied by at least one person 55 or older, and
 - b. the owner has published and adhered to policies and procedures which show an intent to provide housing for persons 55 or older.

Federal law excludes “mom and pop” landlords from the familial status protections, although state law does not. “Mom and pop”

landlords are defined as those who occasionally rent a single family home, or nothing larger than a 4 unit building. They must also live in one of the units.

Victims of Domestic Violence, Sexual Assault, or Stalking

A landlord may not discriminate against an applicant or tenant because they are, or have been, a victim of domestic violence, sexual assault, or stalking. This kind of discrimination includes evicting a tenant, failing to renew or refusing to enter into a rental agreement, and imposing different rules or standards, or selectively enforcing rules or standards against victims. (90.449 (1) and (2))

Additionally, if a tenant commits a criminal act of physical violence related to domestic violence, sexual assault, or stalking against another household member who is also a tenant, the landlord may:

- evict the perpetrator on 24

Chapter 2: Discrimination

hours notice but may not evict the other tenants. (see *Eviction and other Landlord Remedies*)

- get a court order to remove the perpetrator without removing the other tenants, if the perpetrator remains on the premises after the notice expires. (90.445(1))

However, the landlord may not require the remaining tenants to pay additional rent, fees, or deposits based on the absence of the perpetrator. (90.445(2))

If your landlord discriminates against you based on these criteria and in the ways outlined above, you may be entitled to up to two months rent or twice the actual damages. (90.449(3)(b))

Note *If you successfully defend against an eviction based on this kind of discrimination, you may not be entitled to attorney's fees if the landlord:*

- *did not know, or have reasonable cause to know, that the reason for the eviction notice was related*

to domestic violence, sexual assault or stalking

- *promptly excluded anyone except the perpetrator from the eviction upon becoming aware that the reason for the eviction was related to domestic violence, sexual assault, or stalking. (90.449(5))*
-

Identifying Discrimination

Much discrimination happens without the victim having the slightest suspicion that discrimination has occurred. Examples of illegal discrimination may include:

- saying that there is no vacancy when there is one;
- requiring a credit check or charging a higher rent or deposit only for members of a protected class (minorities, families, disabled, etc.);
- trying to discourage a member of a protected class in any way (e.g. saying "There are no other people of color here; you may feel more comfort-

- able somewhere else”); or
- any other distinction in the terms or conditions of the rental.

What to Do

If you feel you have been discriminated against, you should report it. Depending on the type of discrimination, there are several ways to seek help.

The Fair Housing Council of Oregon can provide additional assistance and may set up a test to determine if discrimination is actually happening. In Oregon, contact the Civil Rights Division of the Oregon Bureau of Labor and Industries. See

Appendix B for contact information.

In addition, some municipalities have their own process for redressing complaints about discrimination. Check your local city code for more information.

You can also seek legal assistance and file complaints in federal or state courts. Even if you don't have proof, file a complaint, especially if you feel you have been discriminated against during the application process. Quick action may result in preventing the landlord from renting the unit to someone else until your case is resolved.

See Appendix A for a checklist of items to review before signing a lease.

Types of Rental Agreements

Length of Time

A rental agreement may be a week-to-week tenancy, month-to-month tenancy, or fixed term tenancy (a lease). (90.100(34))

Landlords may increase rent with a 7-day written notice for weekly tenants, and with a 30-day written notice for monthly agreements. Landlords may also terminate weekly agreements

with a 10-day “no cause” written eviction notice, and monthly agreements with a 30-day “no cause” written eviction notice.

Term agreements are commonly called “leases” and have a starting and ending date. They typically run a year, a school year, a half-year, etc., and usually end without notice when that time is up. If a tenant stays in the property after the end of a term lease without signing a new agreement, the tenancy continues as a month to month agreement

Month-to-Month	Lease
Rent can be raised with a 30-day notice.	Rent can only be raised at the end of the term, unless both parties agree.
Landlord can give 30-day “No Cause” notice to move.	Landlord cannot give tenant “No Cause” notice to move until the end of the lease.
Tenant can give 30-day “No Cause” notice to move.	Tenant cannot give “No Cause” notice until the end of the lease.
Changes that don’t “substantially alter” the agreement can be made with 30-day notice. Changes that do substantially alter the agreement cannot be made unless both parties agree in writing.	No changes can be made unless both landlord and tenant agree in writing.

with all the other terms of the old lease.

Landlords may reserve the right to raise rent during the course of a lease. Read the rental agreement carefully.

Note  A “Section 8” voucher is a type of agreement through the local housing authority. The program gives rent assistance to tenants who qualify through HUD. Landlords who accept “section 8” voucher tenants may end a rental agreement without cause upon the ending date of the term agreement. See Appendix B for resources and contact information.

Oral Agreements

Rental agreements can be oral or written. However, written agreements have the advantage of providing evidence concerning who is responsible for what. Oral agreements may lead to serious misunderstandings in the future if both parties must rely on memory to resolve a dispute.

Written Agreements

Most written agreements are on one of several standardized forms. The agreements may contain conditions not mentioned in the Act but that are legal when signed by the tenant (house rules, etc.), provided the rule is not prohibited by the Act or other laws. (See “The Agreement Can Include,” next page.)

The Act also gives landlords some rights which can only be exercised if a written rental agreement so provides. For example, a landlord may serve a certain notices by “nail and mail” only if a “written rental agreement so provides.” (90.155(1)) (See Evictions)

Tip  Keep a copy of everything to do with your tenancy in a file, and hold on to it, even after you move out.

What the Agreement Can Include

The Act identifies what the rental agreement should contain and what the landlord must disclose to the tenant. If a written agreement is signed, a copy shall be given to the tenant as well as any changes, additions or amendments. Even if you have no rental agreement at all, the law sets out a few basic terms.

"Good Faith"

"Good faith" means honesty in the conduct of transactions. (90.100(17)) The law imposes an obligation of "good faith" on every duty and remedy in the performance of a rental contract. (90.130)

Occupancy Limits

Landlords are free to set reasonable occupancy limits. The tenant must have written notice of the limits when the agreement is signed, and be notified of any limits if they are adopted afterward. If the limits are substantial, they only go into effect if the tenant agrees in writing.

A minimum of two people per bedroom must be allowed. (90.262(3)) Other factors which determine how many people can live in a rental include:

- the size of the bedrooms;
- the overall size of the dwelling;
- any discriminatory impact on any of the protected classes

If the landlord imposes unreasonable or discriminatory occupancy limitations, the tenant should contact an attorney or the Oregon Bureau of Labor and Industries.

Rules and Regulations

The landlord may adopt rules concerning the tenant's use and occupancy of the premises. (90.262)

It is best to have all agreements in writing for future reference. Rules and regulations are enforceable only if:

- their purpose is to promote the convenience, safety or welfare of tenants; to protect the landlord's property from

- abuse; or to provide for the fair distribution of services or facilities to tenants;
- they are reasonably related to their purposes;
- they apply to all tenants fairly;
- they are clear enough to inform the tenant of what is expected;
- they are not for the purpose of evading the landlord's obligations; and
- the tenant has notice of the rules or regulations when making the rental agreement or when the rules are adopted.

If a rule is adopted after the tenant has entered into the rental agreement, or if it makes a “substantial modification” to the tenant’s “bargain” (e.g., it makes a real difference in the value of the tenancy to the tenant), the rule is not effective unless the tenant has consented to it in writing. (90.262(2)) If the tenant does not disagree to the rule in writing and pays rent to the landlord, the courts have ruled that the tenant tacitly agrees to the rule.

Examples of such addenda are smoke detector agreements, pet agreements, yard and lawn care, etc.

Note  *A month-to-month tenant can be evicted with a 30-day “no cause” notice after refusing to consent to a new rule, unless the eviction is retaliatory or otherwise unlawful. (See Retaliation, and Discrimination.)*

“Drug and Alcohol Free Housing”

Within the Act, this term refers to a specific type of housing where each of the units on the premises is occupied by at least one tenant who is a recovering alcoholic or drug addict. The person must be actively participating in a program of counseling and rehabilitation. (90.243)

To qualify as “drug and alcohol free housing,” the landlord must be a non-profit corporation or housing authority and must provide:

- a drug and alcohol free environment;

- monitoring of tenant compliance;
- individual and group support for recovery;
- access to a specified program of recovery.

The rental agreement must be in writing and must provide that:

- tenants are not to use or possess alcohol or drugs on or off the premises;
- tenants' guests shall not use or possess alcohol or drugs on the premises;
- tenants are to participate in a specified recovery program;
- the landlord is to receive written quarterly reports about a tenant's program; and
- the landlord may require a tenant to take a test for drug or alcohol use at the landlord's discretion and expense.

If a tenant fails to comply with the terms of a drug or alcohol free housing agreement, the tenant may be evicted upon 48-hours written notice from the landlord.

Disclosures

The following items must be disclosed to both applicants and tenants before entering into a rental agreement:

Ownership

Tenants must be informed in writing of the name and address of:

- any person authorized to manage the premises; and
- the owner or person authorized to act on behalf of the owner to receive tenants' notices and demands, and to be served with summons and complaint.
- the address to send mail to relating to the tenancy

This information must be kept current. If this disclosure is not made, the person who acted as landlord (e.g. the manager or agent) may be held liable for the landlord's obligations under the Act (90.305).

Legal Proceedings

If the property has no more than four dwelling units, the tenant must be notified if there are pending legal proceedings, such as foreclosure. Specifically, if the property is subject to any of the following, the tenant must receive written notice before the rental agreement is completed:

- Any outstanding notice of default under a trust deed, mortgage or contract of sale, or notice of trustee's sale under a trust deed;
- Any pending suit to foreclose a mortgage, trust deed or vendor's lien under a contract of sale;
- Any pending declaration of forfeiture or suit for specific performance of a contract of sale; or
- Any pending proceeding to foreclose a tax lien.

If the tenant moves as a result of the above circumstances and they were not disclosed, the tenant may recover twice the actual damages or twice the monthly rent, whichever is greater, and all

prepaid rent, in addition to any other remedy that the law may provide. (90.310)

Lead-based Paint

Sellers and landlords of all housing built before 1978 must provide a disclosure with all known information about lead based paint and a pamphlet that provides details regarding the health risks associated with the paint. (42 U.S.C. 4852(d))

\$Penalty *Tenants may seek damages up to three times the amount of injury and \$10,000 in federal court if the landlord fails to provide the disclosure and the pamphlet.*

"Meth Labs"

Homes that have been used to manufacture illegal drugs such as methamphetamine can be toxic and a health hazard. It is illegal for a landlord to rent or sell a property that has been deemed unfit for use because of illegal drug manufacturing. The only exception to this is if the landlord discloses that the property has been deemed unfit

for use and cannot be lived in until it is determined safe by the state. (453.864)

\$Penalty *The tenant can end the tenancy upon finding out that the landlord did not disclose this information, and the landlord must return prepaid rent and deposits.*

Utilities Which Benefit the Landlord and Other Tenants

The landlord must disclose in writing whether the tenant will be paying for any utilities or services (e.g. electricity, gas, oil, water, hot water, heat, air conditioning, garbage collection or disposal) which will benefit the landlord or other tenants. This is determined if a utility or service paid for by the tenant is delivered to any area other than the tenant's unit. (90.315(2))

\$Penalty *The tenant may recover twice the actual damages or one month's rent, whichever is greater, if the landlord fails to disclose this in writing at or before the beginning of the rental agreement.*

What the Agreement Cannot Include

The Act prohibits anything which waives the rights given to the tenant by the Act. For example, a landlord cannot rent a unit "as is" to evade their legal obligations. (90.245) The Act also provides remedies for other "unconscionable" or grossly unfair provisions. The following types of terms are prohibited and unenforceable:

- Any and all terms that waive any of the tenant's rights or remedies under the Act; (90.245(1)(a))
- **"Lockout:"** switching locks while a tenant is out of the unit. The only way to evict a tenant is through the courts; (90.435), (90.375)
- **"Landlord's lien:"** a lien in which the landlord may hold a tenant's property if the tenant defaults on the rent; (90.420)
- **"Confession of judgment:"** a clause in which the tenant gives up the right to be heard in court by granting the land-

lord the right to a judgment against the tenant before the landlord has even filed a lawsuit; (90.245(1)(b))

- **“Exculpation or limitation of liability:”** the tenant agrees not to sue the landlord for negligence or not to sue for more than a given amount; (90.245(1)(c))
- **Agreement to pay attorney fees if a dispute ends up in court:** the Act already provides that attorney fees and court costs may be charged against the losing party. (90.255)

\$Penalty *The tenant may recover actual damages and a penalty of up to 3 months’ rent if the landlord deliberately includes such a provision(s) in the rental agreement and attempts to enforce it. (90.245(2))*

Transfer of Possession

Transferring possession is when access to the property is given either from the landlord to the tenant or vice versa. (90.147)

Transfer of possession may be different from the ending date of a rental agreement (e.g., if a tenant abandons the property or if there is an eviction proceeding). (See *Evictions*)

Transfer of possession from the landlord to the tenant occurs when the landlord gives actual notice (written or verbal) that the tenant has the right to occupy the rental. The notice may include delivery of the keys.

Transfer of possession from the tenant to the landlord occurs when:

- the tenant gives written notice that he/she has given up the right to occupy the rental. The notice may include the return of keys;
- the landlord reasonably believes that the tenant no longer claims the right to live in the rental after the ending date of the tenancy;
- the landlord reasonably knows that the tenant has abandoned the rental.

Inventory and Condition Reports

Much time is spent in court disputing the condition of a unit and the deductions from security deposits. Performing an inspection gives both parties exact knowledge of the condition of the unit, and helps to prevent future misunderstandings which could lead to the landlord withholding the deposit. (See *Recovering the Deposit*)

The landlord is not required to inspect the unit when you

move in or out. However, do an inspection with the landlord if possible, and note in writing all damage, disrepair, and dirt. If the landlord is unavailable, ask a friend to help.

If the landlord promises to make any alterations, repairs, or other work, it should be detailed in the written agreement and initialed by both parties.

If you discover any problem after moving in, put in writing and send a copy to the landlord to amend the move-in documentation.

See Appendix A for a checklist of items to review before signing a lease.

Security Deposits, Fees & Advance Rent

Rental agreements may require you to pay a security deposit, a fee, and/or an advance payment of rent before moving into the dwelling (90.300). You should receive a written explanation of the landlord's conditions for refunding or keeping the deposit if a rental agreement is not signed. Always ask for a receipt when you pay a deposit or fee.

Security Deposits

Deposits may be called a damage deposit, a security deposit, or a cleaning deposit. It is the tenant's money which the landlord holds to cover costs if the tenant breaks some part of the rental agreement (e.g., doesn't pay rent, causes damage, or is negligent in keeping the place clean).

A deposit is, by definition, refundable if the tenant meets clearly specified conditions. The landlord must return the deposit in whole or in part depending on the tenant's compliance

with the rental agreement. (See Recovering the Deposit)

There is no limit to the amount of deposit a landlord may require as part of the rental agreement, but there are some limits on when the landlord can charge a new or increased deposit. During the first year of tenancy, a landlord is not allowed to change the rental agreement to require the payment of a new security deposit, or to increase the amount of the deposit. The exception to this is that if the landlord and tenant agree to change the rental agreement, to permit a pet for example, and the additional deposit relates to that change. After the first year, a landlord can require a new or increased security deposit, but must allow the tenant at least three months to pay that deposit. (90.300(3))

Note *Some landlords use the term*
 *"non-refundable deposit"*
which is actually a fee.

Protection Against Future Problems

The law does not require the landlord to keep records showing the condition of the rental when the tenant moved in, but it is a good idea for both parties. When you move in, make complete records, including:

- receipts showing you paid the deposit, fees, and anything else you paid
- a copy of any written agreements; and
- a record of the condition of the unit.

Fees

The landlord can charge the tenant a fee for a reasonably anticipated landlord expense, or as a penalty for breaking the terms of the rental agreement. Fees are different from deposits, and a landlord may not be required to return, or account for, a fee. Some examples of fees are: application, screening, cleaning, pet privileges, parking, and storage, lease cancellation, late rent, bounced checks, etc.

If a fee is for a service, a tenant may be able to save some money by persuading the landlord to let him/her perform the service. If the landlord agrees, it should be in writing.

In most cases, you can only be charged a fee once at the beginning or during your tenancy. The exceptions are fees for late rent payment, bounced checks, or any noncompliance with a rental agreement that says you can be charged a fee for noncompliance. (90.302)

Fees should be noted as such in writing (in the contract, a receipt, etc.), and you should make sure you understand what you are paying as a fee and what as a deposit.

Prepaid Rent

Rental agreements may call for either “a month in advance,” or “first and last month in advance,” or a “deposit on the last month’s rent.”

Note  Sometimes rent may be increased before you pay the last month's rent. You must then make up the difference between the advance rent paid and the new rent.

When you pay “last month’s rent” up front, you still pay rent at the beginning of each month, but have already paid for the last month as a kind of deposit. In a lease, it is a good idea to specify when the last month will be. Last month’s rent can only be used to pay for rent, and can only apply to the last month of rent, unless the landlord and tenant agree in writing that it can be used to pay for rent for other than the last month. When you move out, the landlord must return to you any unused portion of the prepaid rent that hasn’t already been refunded to you. The rules are

the same as for deposits regarding how quickly and with what accounting prepaid rent must be returned (See *Recovering the Deposit*).

Get itemized receipts for any prepaid rent. If a tenant terminates the agreement early as a result of the landlord’s breach of contract all unused prepaid rent may be returned. This rule applies to both leases and month-to-month agreements. (see *Tenant Remedies for Lack of General Repairs; Disclosures; Unlawful and Dangerous Rentals*)

Tip  Keep all receipts and clear records so that you know how much has been paid and for what!

All About Rent

The tenant's first obligation is to pay the rent. Rent is payable without demand or notice at the time and place agreed to by you and the landlord. Unless otherwise agreed, rent is payable at the rental unit at the beginning of any term of one month or less, or in equal monthly installments if the rent term is more than a month. (90.220(6)(a))

If there is no rental agreement, the rent is the fair rental value of the unit. (90.220(5))

Prorating

In a monthly agreement where the tenant moves in on the 10th of the month, the next rent would be due on the 10th of the next month, and so forth. However, most landlords will prorate the rent. For example, a tenant who moves in on the 10th of a month when rent is payable on the 1st should pay rent only from the 10th to the end of that month. The landlord may choose to get the first month's rent in full, and then prorate the

next month. The daily rate can be calculated by multiplying the monthly rate by 12, then dividing by 365.

A month-to-month tenant who moves out in the middle of the month after a 30-day notice has been given also owes a prorated rent through the date of the notice. (90.427(3), 90.380)

Work in Exchange for Lower Rent

The landlord and tenant may agree for the tenant to perform specific maintenance tasks and minor repairs. The agreement and terms must be:

- in writing;
- a fair exchange;
- in good faith; and
- not for the purpose of evading any habitability standards.

Note *The landlord cannot say "you get cheap rent if you promise not to complain about conditions."* (90.320(2))

Rent Increases

Landlords may increase rent with a 7-day written notice for weekly tenants, and with a 30-day written notice for monthly agreements. (90.220(6)(a))

In a lease, rent may be increased only at the end of the term, with 30-days notice, when the lease is renewed.

Late Charges

Late charges cannot be incurred unless the written rental agreement provides for late charges. When the agreement so provides, the landlord must specify the date rent is due, the date late charges begin to accrue, and the type and amount of the late charge.

The three types of late fees are (90.260(2))

- **a per-rental-period fee (flat fee):** a flat amount charged only once per rental period, whether rent is paid on the 6th or the 31st. The amount is based on the normal amount

charged by landlords;

- **a per-day fee:** accrues every day until rent is paid, and is limited to 6% per day of the flat monthly late fee;
- **a 5-day period fee:** charged once for each late 5-day period and is limited to 5% of the rent payment.

Nonpayment of a late charge alone cannot be the basis of a “72-Hour” or “144-Hour” eviction notice for nonpayment of rent. (90.260(6)) However, failure to pay a late fee can be a basis for eviction for cause. (90.260(6), 90.400(1)) Also, the landlord may charge interest on unpaid late fees.

Utilities and Services

Determine with your landlord who is responsible for establishing and paying for utility services. Unless the tenant and landlord agree otherwise, the tenant will have to pay for services. Contact information for most utility numbers can be found online or in the front of the phone book.

Payment of your utility bills can affect your credit rating, so tenants should be sure to keep up-to-date on all payments. A landlord can also evict a tenant for failure to maintain utility service.

Note *If some of the utilities the  tenant pays for benefit the landlord or another tenant, the landlord must disclose this fact in writing. (See “Disclosures”)*

If a utility deals with a customer in a manner which is unfair or unlawful, direct your complaints to the Public Utility Commission (PUC) in Salem (See Appendix B for contact information). PUC regulations restrict the right of a private utility to terminate service for nonpayment, especially where a resident's health is affected.

Paying the Landlord for Your Utilities

In some cases, and if the rental agreement allows it, the landlord may cover the cost of utilities for the tenant or for common areas, and then require the tenant to pay the landlord for those costs.

The charges are distinct from rent, and the method the landlord uses to allocate the charges should be clear. If the method used isn't described in the written rental agreement, you can require the landlord give you a copy of the utility bill as a condition of paying the charges. (90.315(4))

Low Income Assistance

One source of help for low income households to deal with escalating heating costs is the federally funded Low Income Energy Assistance Program (LIEAP).

There is also the Oregon HEAT program, an emergency energy assistance program. Assistance is available only during the winter months, and only for people who are about to have their services cut off. Each county has assistance available for different utilities.

The Public Utility Commission has a telephone assistance program for help with telephone connections and bills. They can

assist the deaf and mobility-impaired to get specialized telephone equipment.

Note *For contact information for any of these agencies, see Appendix B*

Low income individuals should also contact their local utility companies for more information. Many utility companies offer a payment plan whereby customers can pay equal monthly installments for service rather than be hit with expensive bills only during winter.

Unpaid Utilities

If you are unable to obtain utility service because the landlord or the prior tenant failed to pay bills, you have several possible remedies. (90.315)

If you have not yet moved into the dwelling, you may:

- pay the outstanding amount and deduct it from the rent;
- enter into an agreement to have the landlord resolve the

lack of service; or

- terminate the rental by giving the landlord actual notice of termination and the reason for termination.

If the agreement is terminated, the landlord must return all rents, fees and deposits within 4 days. (90.315(5b))

If you have already moved into the dwelling, you may:

- pay the outstanding amount and deduct it from the rent;
- enter into an agreement to have the landlord resolve the lack of service; or
- terminate the rental by giving the landlord 72 hours actual (verbal or written) notice prior to the date of termination.

If the landlord restores or makes the utility service available to the tenant within 72 hours, the tenancy does not terminate.

If the agreement is terminated, the landlord must return all rents and fees within 4 days.

Any security deposit must be returned within 31 days. (90.315(6), 90.300)

The tenant may also recover actual damages suffered as a result of the utility shutoff. (90.315(6))

If the landlord is responsible for the cost of utilities, and if services are disconnected as a result of a failure to pay, you may pay the outstanding balance and deduct the amount from the rent, or you may terminate the rental agreement with 72 hours notice. The tenancy does not terminate if the landlord restores service during the 72 hours. (90.315(7))

Gas and Electricity

You should notify the local utility a few days before moving in to arrange for the gas and electricity to be turned on.

New customers may have to provide basic background information (e.g., name, address, Social Security Number), or will be asked to submit credit references from other utilities or creditors, or find a co-signer.

If you have an outstanding bill with the utility, the utility may ask for a deposit.

Heating Oil

Heating oil companies are listed in the yellow pages of the phone book. The rate charged will depend upon the size of your tank and the amount ordered. Your landlord can explain the mechanics and size of the furnace and tank. Clarify how much fuel is in the tank, whether you are responsible for keeping fuel in the tank, and how you will get credited for remaining fuel when you move out.

Some landlords may require tenants to keep the tank full to avoid costly clogs of the fuel injector. This should be included in the rental agreement. Some oil companies will provide “keep-full” service for automatic delivery.

Water/Sewer

The landlord usually provides water in apartment rentals but not in houses. While the tenant might pay for the actual service,

the landlord is obligated to provide at least access to a water supply. Contact the local water district for service.

Garbage and Recycling

The landlord usually provides garbage service for apartments but not for houses. The landlord has the ability to waive that duty in writing with the tenant. However, cities may adopt local ordinances which require landlords to provide the can and removal service despite any written agreement. The City of Portland has such an ordinance.

The Residential Landlord Tenant Act requires that the landlord at least provide receptacles (90.320(1)(g)). In Portland, the Act (90.320(1)(g)) and a City Ordinance (29.30.140) require the landlord to pay for garbage service for at least 30 gallons each week for both single and multi-family dwellings where individual container service is provided. If tenants need more garbage service, they may pay for it.

Landlords of apartment complexes with five or more units must also supply adequately-sized recycling containers for four of the five principal recyclable materials. They must provide regular collection service, notify the tenants annually of the location of the containers and notify new tenants about the recycling. (90.318) This only applies to complexes in the cities that have implemented multi-family recycling services.

Telephone

If a customer has an outstanding bill with the utility, they may have to pay a deposit up to the equivalent of two month's worth of estimated service, based on past usage. The customer has a choice of available service (e.g., call waiting, voice mail, etc.). Each option costs differently, and should be ordered with care to avoid any surprises on the bill.

Through "supersedure," a new tenant may be able to avoid the high installation charges. If a new tenant moves into a place that has satisfactory phone ser-

vice, they may transfer the service to their name if both they and the former tenant agree.

The account must not have any restrictions on it (e.g., no long distance capability). The new tenant then takes the responsibility for any old phone bills.

Insurance

Check with the landlord about what their insurance covers. It is possible, and usually affordable, to purchase renter's insurance to insure valuable personal property.

Some landlords have policies, which make the tenant liable for damage, especially fire. Tenants may be held liable for damage caused by their negligent or intentional conduct, and tenants should check the landlord's policy.

The Landlord is liable for damage to tenant property if the damage occurred because of landlord negligence or noncompliance with living standards. The liability cannot be waived.

Tenant Rights & Responsibilities

Responsibility for maintaining a decent dwelling and a good rental relationship is shared by the landlord and tenant. Tenants must:

- use the unit only as a dwelling, and not as a business (unless the landlord agrees in writing), and not for illegal activities; (90.340)
- use the parts of the unit (kitchen, bath, etc.) as they should be used;
- keep areas under their control clean, sanitary, and free from accumulation of debris, garbage and filth;
- use facilities such as electric, heat and plumbing in a reasonable manner;
- not deliberately or negligently damage or remove, or knowingly allow others to damage or remove, any part of the premises;
- conduct themselves and visitors in a manner that will not disturb the neighbors (tenants are responsible for the actions

of their guests, and parents for the actions of minors (30.765); (90.325(9)))

- test smoke alarms at least once every 6 months and replace batteries as needed. (479.275, 90.325(6)) and not remove or tamper with a properly functioning smoke alarm. (90.325(8))

Many communities have local codes restricting noise that can be heard outside the dwelling to certain hours. The rental agreement may also have additional rules and regulations. Tenants should carefully read through the agreement before signing.

Harassment

Tenants have a right to live in a home that is free from harassment. (90.375) The landlord may not unlawfully remove or exclude the tenant from the rental, or willfully diminish services such as heat, running water, electricity or other essential services. The landlord also must not seriously attempt or threaten to do the above prohibited actions.

\$Penalty *The tenant may get a legal order to recover possession of the unit or may end the rental agreement and recover up to 2 months' rent or twice the actual damages, whichever is greater. This is extremely difficult to prove and requires very good documentation.*

Notice of Tenant's Absence

The rental agreement may require the tenant to give actual notice to the landlord of any expected absence of more than 7 days. Notice should be given no later than the first day of the absence.

The purpose of this requirement is to insure the maintenance of any systems that need regular attention (e.g., heat), to protect against theft, and to guarantee that the landlord will not think the unit has been abandoned. (90.340)

\$Penalty *The landlord may recover actual damages if the tenant deliberately fails to notify the landlord of an extended absence. The landlord can also enter the dwelling for routine maintenance if “reasonably necessary” or for an emergency. (90.410)*

Subleasing

A written rental agreement may prohibit subleasing (when a tenant temporarily rents a unit or part of a unit to another person) without the landlord’s written permission.

If the agreement prohibits subleasing, and if the original tenant does sublease and the landlord does not knowingly ac-

cept rent from the unauthorized tenant, then the landlord may give a 24-hour eviction notice to the unauthorized tenant. (90.403) (105.105-105.168)

Unauthorized Roommates

If the original tenant has an unauthorized roommate, the landlord may give a month-to-month renter a 30-day “no cause” termination notice, or a “for cause” notice in the case of a lease, which states the violations and the opportunity to correct the problem in the case of a lease. (See *Evictions*)

The landlord may simply demand that the unauthorized roommate go through the normal application process.

The landlord has a responsibility to take care of all repairs. If the needed repairs are caused by the tenant, their guest or pet, the landlord may bill the tenant for the cost of those repairs.

Landlord Rights & Responsibilities

The landlord must keep the rental “habitable” at all times. (90.320(1))

Habitable means:

- a weatherproof and water-proof exterior, roof, walls, doors, and windows;
- approved plumbing facilities in good working order;
- hot and cold running water from an approved water supply connected to an approved sewage system, and maintained in good working order;
- safe drinking water to the extent the landlord can control the system;
- adequate and approved heating facilities in good working order;
- electric lighting, wiring, and

equipment, approved and in good working order;

- when the tenant moves in, the rental has clean and sanitary buildings and grounds, is free from accumulation of debris, filth, rubbish, garbage, rodents and vermin, and is safe for normal and reasonable uses. These standards continue to apply only to common areas in the landlord’s control after the tenant moves in;
- adequate garbage receptacles. It may be the tenant’s responsibility to pay for garbage collection if specified in the rental agreement.
- floors, walls, ceilings, stairs and railings in good repair;
- if provided, ventilation or air conditioning, elevators, or other facilities and appliances (washers, dryers, stoves, refrigerators, etc.), in good working order;
- safety from fire hazards;
- working smoke detectors with working batteries provided only at the beginning of the tenancy (the tenant is responsible for testing the device inside the unit, and the landlord

is responsible for testing in common areas);

- working locks for all outside doors except doors to common areas, and keys to locks that require keys;
- working latches for all windows that open (except common areas), unless fire or safety regulations prohibit them.

Many cities have additional habitability standards.

Notify the Landlord of Needed Repairs

If something needs to be repaired, first notify the landlord. Keeping good written documentation is one of the best ways a tenant can protect their rights. Tenants can write a letter to the landlord asking for repairs. In the letter, specify what repairs need to be done and when would be a good time for the landlord to access the premises to make the repairs.

Tip  *Keep a copy of every letter to and from your landlord.*

Tenant-Requested Repairs

If the tenant requests repairs in writing, the landlord may enter the unit without further notice. Unless the tenant's notice specifies times, the landlord may enter at any reasonable time for up to 7 days after the tenant's request to make the repairs. (90.322(c)) If someone other than the landlord does the repairs, the person must provide the tenant, upon the tenant's request, with written authority from the landlord to make the repairs. (See *Access*, below)

Access

A landlord may enter the tenant's dwelling to:

- inspect the premises;
- make necessary or agreed repairs, decorations, alterations, or improvements;
- supply necessary or agreed-upon services; or
- show the dwelling unit to prospective or actual purchasers, mortgagors, tenants, workers, or contractors. (90.322)

Notice of Entry

Unless the landlord and the tenant agree otherwise, the landlord must give the tenant at least 24 hours' written or verbal notice of intent to enter the premises. This notice is required, except for emergencies, for all repairs and maintenance work initiated by the landlord, or any other permitted reason. They may then enter at a reasonable time as agreed to by the tenant and the landlord.

The tenant may deny consent to entry. To do so, the tenant must give written or verbal notice to the landlord denying entrance, or post it on the front door of the dwelling. The tenant must, however, provide reasonable access to the landlord. (See *Abuse of Access*)

Showing the Dwelling Unit to a Prospective Renter

A tenant and landlord may reach an agreement to show the dwelling unit to a would-be renter without notice to the current tenant provided that the

agreement is in a written form separate from the original agreement and signed by both parties, and is referred to by the written agreement. (90.322(1)(d))

Legal Entry without Consent

The landlord may enter the rental without notice or consent in an emergency, which includes a repair problem which must be repaired immediately to avoid serious damage.

Note  *The landlord must provide written or verbal notice within 24 hours after an emergency entry.*

Other times the landlord may come onto the tenant's property:

- when the tenant has requested repairs in writing;
- when the tenant has been absent for more than 7 days and entry is reasonably necessary;
- pursuant to a legal order;
- when the tenant has abandoned or surrendered the premises; or
- to come onto the property in order to serve a notice.

The landlord shall not abuse the right to access or use it to harass the tenant, nor shall the tenant unreasonably deny access to the landlord. (90.322)

Abuse of Access

If the landlord makes an unlawful entry, a lawful entry in an unreasonable manner, or repeated demands for entry which harasses the tenant, the tenant may obtain a court order or end the rental agreement. The tenant can recover damages amounting to no less than one month's rent. (90.322(8))

If the tenant unreasonably withholds access, the landlord may obtain an injunction or terminate the rental agreement. The landlord may also recover actual damages. (90.322(7))

Negotiation

A tenant or landlord may sometimes wish to make changes which are not covered by the contract and/or the Act. Changes could include dropping or adding house rules, allow-

ing or prohibiting pets, doing some painting, or providing a new service such as washing machines.

If there are no problems with essential services or contract compliance, your best bet is to try friendly negotiation. If tenants have problems with essential services or contract compliance, they may use those problems as an occasion to organize and exert pressure for other needed changes. Organizing tenants towards a common purpose is legally protected.

Tenant Remedies for Lack of General Repairs

The statute separates general maintenance into two categories: general services and essential services. If the landlord fails to repair a problem, the tenant may fall back on the general remedies section of the Act. The general remedies provided by 90.360 are damages and relief through a legal order (injunction) which can be asserted by

suing the landlord or defending against an eviction. The tenant can also end the tenancy under this section.

Note  *The Act's general provision for habitability remedies applies to all material violations of the rental agreement (90.360(2)) as well as to violations of the landlord's habitability obligations. However, the tenant must prove that the landlord knew or should have known of the problem(s) in the counterclaim. (90.370) Tenants can choose to enforce either general remedies or essential remedies, but not both. Choose the one which seems best given the desired outcome, the risks being taken, and the strength of the case. In many cases, reaching an agreement with the landlord will best solve the problem.*

Repairing a Minor Defect

If your landlord fails to make a repair that would reasonably cost less than \$300, such as leaky plumbing, faulty light switches, or a stopped up toilet, you may be able to hire out the

repair yourself, and deduct the cost from your next month's rent (90.368(2)). Before you do this, you must give your landlord written notice that contains a description of the problem and your intention to have the repair made and to deduct the cost unless the landlord fixes the problem by a specific date at least 7 days after delivery of the notice (90.368(3)).

If your landlord doesn't make the repair by the specified date, you can hire someone to have it done and deduct the cost from your next month's rent, as long as you provide a receipt. The repairs must be made by a qualified repair person. You may not make the repairs yourself and deduct the cost (90.368(4)).

There are several exceptions to this remedy. For example, under the Act you cannot deduct the cost of a repair if:

- if your landlord fixes the problem after the specified date, but before the person you hire makes the repair;

- if you prevent your landlord from making the repair any-time before the specified date;
- if the problem was caused by negligence or deliberate act on your part, the part of another tenant, or a guest (90.368(5))

“Fix or I Quit” – Tenant Termination for Cause

This remedy is applicable for breaking a fixed-term rental agreement before the term is up. (90.360) Month-to-month tenants may terminate on 30-days’ notice with or without a reason. (See *Regular Terminations*) If the landlord has failed to live up to their part of the contract or has violated the Landlord Obligations in a way that substantially affects the value of the tenancy to the tenant, the tenant may:

- deliver a written notice listing any and all breaches of the contract;
- the notice may state that if the breaches are not cured within 30 days (7 days in the case of essential services),

then the agreement will terminate at the end of that 30 days.

If the breach is fixed (by repair, payment of damages, etc.) before the date specified in the notice, the agreement is not terminated.

Recurring Problem

If the same general problem recurs within 6 months, the tenant may terminate the agreement upon 14 days written notice. The notice must again specify the problem and the date of termination of the rental agreement.

Return of Deposits after Termination

If the agreement is terminated due to the landlord’s breach, the tenant is entitled to the return of all prepaid rent and deposits except for the amount necessary to cover damages caused by the tenant. Additionally, the tenant may sue to recover any damages (e.g. moving expenses).

Suits Against the Landlord

The tenant may recover damages and get a legal order (injunction) to fix the problem.

Warning! *Court costs and attorney fees may be charged to the losing party, which could be the tenant initiating the claim.*

This remedy may be the best tactic if the tenant can find a lawyer and if the other remedies don't fit the case. Often, a landlord will negotiate a settlement rather than face an expensive court battle.

Typically, the tenant in the case would include a detailed statement of everything that is wrong with the rental situation (habitability, poor management, etc.) and would ask for:

- a court order requiring the landlord to make repairs and fix the problems according to a strict schedule;
- damages which could include part or all of the rent which has already been paid, the cost of repairs, any penalty

provided by the Act, as well as damages suffered by the tenant(s) for living under such conditions;

- a court order forbidding any evictions for any reason, unless the eviction is approved by the court where the case is pending.

Defending Against An Eviction Action

The tenant's right to damages under 90.360 can be used as a defense against an eviction action based upon nonpayment of rent. However, the tenant must prove that the landlord knew or should have known of the habitability violations before the eviction (e.g., a copy of a letter listing the violations that is certified by the post office to have been sent). (90.370(1)(a)) The tenant may then counterclaim in an eviction action for damages and injunctive relief for repairs.

If the tenant counterclaims, the court may require the tenant to pay rent into court. The amount of the counterclaim is limited

based on which court the case is in. Tenants should have access to an attorney before taking steps in this direction.

Tenant Remedies for Lack of Essential Services

The Act has special rules and remedies for getting repairs done for essential services. However, the general remedies above may also be applied to get essential services repaired.

Warning! *Use these remedies with extreme caution and preferably with the help of an attorney. Some attorneys say that the general remedies are almost always a better choice because of the complexity and limitations of the essential services remedies. You can't use both remedies! A tenant who adopts one of these essential service remedies cannot also end the rental agreement for that breach as under the General Remedies ("Fix or I Quit"). (90.365(5))*

The Essential Services

Essential services are defined as:

- heat;
- plumbing;
- hot and cold running water;
- gas (when applicable);
- electricity;
- light fixtures;
- locks for exterior doors;
- latches for windows;
- any cooking appliance or refrigerator supplied or required to be supplied by the landlord;
- any other service specified in the rental agreement, the lack of which creates a serious threat to your health, safety, or property, or makes the home unfit to occupy. (90.100(10))

Notify the Landlord

Tenants do best when they notify the landlord of the problem in writing. Notice can be delivered personally or sent by first class mail. Keep a copy of the letter for your records.

Under the essential services remedies, the tenant must allow the landlord reasonable time

and reasonable access to provide the essential service. What qualifies as reasonable depends on the circumstances.

Note  *Under the essential services remedies, a tenant's rights do not take effect until the tenant has notified the landlord, or has made a serious attempt to do so in the case of an emergency.*

The tenant loses these rights if they caused the damages. This could be tricky in a case like frozen pipes. However, it does not relieve the landlord from the responsibility of repairing the problem.

Prepare Some Proof

Write down everything that is wrong as it happens. You will need this information for your letter to the landlord. Get it verified by a friend, or better yet, by a housing or fire inspector. The inspector's report will be sent to the landlord, but you must ask for a copy for yourself. Other forms of evidence that you might use include photos, repair

estimates, receipts, and names of any repair persons involved.

If the landlord chooses to contest your claim that it was an essential service or that they were negligent, this proof will be important. If your problem is a real disaster and things happen too fast for you to establish proof from the beginning, write down everything that happened as soon as you can.

The Remedies

If your landlord continues to fail to supply an essential service, you may give written notice to your landlord that specifies the problem and:

- procure the essential service yourself and deduct the actual cost (up to \$300) from your rent; or
- sue for damages based on the lowered rental value

For the first option, write to the landlord and give them at least 7 days to fix the problem. In the letter, let landlord know that if it isn't fixed after 7 days, that you

intend to procure the service yourself and deduct the actual and reasonable cost of repairs (up to \$300) from the rent. This is only allowed if provided that the repair is made by a licensed or registered professional and the needed repair prevents an imminent threat to the tenant's health or safety. The landlord may specify the party who is to do the work.

Additionally, if the lack of essential services makes your place unsafe or unfit to occupy, you may:

- Procure substitute housing, in which case you are excused from paying rent, and you may be able to recover damages from the landlord if the cost of comparable and reasonable substitute housing in excess of your rent (90.365(1)(c))

If your landlord fails to provide essential services in a way that that poses a serious and imminent threat to your safety, health, or property, you may also simply give your landlord 48 hours written notice to end your rental agreement and move out.

There are several exceptions to the remedies for lack of essential services. For example, your landlord would not be considered to be negligently or purposely failing to supply an essential service:

- if the landlord is making reasonable and good faith efforts to supply the service, and the circumstances are beyond the landlord's control;
- if the problem was caused by deliberate or negligent action on your part, or the part of another tenant or guest.

Willfully Refusing to Provide Essential Services and Unlawful Ouster

If the landlord unlawfully locks out the tenant or willfully cuts off, or seriously threatens to cut off any essential service, the tenant may recover up to two months rent or twice the actual damages, whichever is greater. The tenant may also terminate the rental agreement at which time the landlord must return all deposits and prepaid rent. (90.375)

Note  Physical injury and emotional distress damages are also “actual damages,” and may be doubled when ORS 90.375 applies (See *Damages for Physical & Emotional Distress*)

Withholding Rent – Things to Consider

If you withhold rent, you risk being taken to court and evicted. It is not generally recommended.

A landlord’s violation of repair obligations may provide a tenant a defense to the payment of rent or to an eviction based on nonpayment of rent. (90.370) This means that a tenant can legally withhold rent as a part of enforcing one of the above remedies (or enforcing a general provision—see *What the Agreement Can Include*.)

Warning! *Withholding rent is not a frivolous step. The chance of ending up in court is great, and an attorney should be consulted before withholding rent. Talk to an attorney that has experience in landlord-tenant law, has*

agreed to represent you in eviction court, and has taken your rent money and put it in a special escrow account.

Step back from your case for a moment and objectively (from the perspective of a property owner or a judge) decide if you look credible. Ask yourself the following questions:

- Have you acted in good faith and with honesty in the conduct of the transaction?
 - Would it be clear to an outsider that justice is on your side?
 - What do you need to do to show that you are not simply trying to cheat the landlord?
-

Note  *If the landlord sues for the money deducted from the rent by the tenant, then the tenant may counterclaim for any amount up to the limit of the court in which the action is brought. (90.370) The counterclaim is in addition to defending the action for rent or possession on the same basis as outlined above.*

Other Remedies For Extreme Situations

Unlawful and Dangerous Rentals

If you find yourself in a significantly dangerous or unhealthy rental, you may be able to seek remedies under the Act. (90.380)

Cities with a population greater than 300,000 have the ability to “red tag” a building that doesn’t meet habitation standards. (90.465) In Portland, if the landlord does not repair a building immediately, the City can force tenants to move. The City also has a fund for tenant relocation costs for which the landlord can be held liable.

Rental After Posting

If a landlord knowingly rents a unit to you after it has been posted by an appropriate agency as unlawful to occupy because of serious violations of state or local law, you may end the agreement immediately. To do so, give written notice and the reason for the termination.

If you terminate tenancy in this way, within 14 days, the landlord

must return to you:

- all deposits and prepaid rent owed to you; and
- all rent prepaid for the month in which the termination happened (prorated if applicable) (90.380(6))

In addition, regardless of whether you terminate tenancy, you may recover from the landlord within 14 days:

- two months’ periodic rent; or
- up to twice the actual damages, whichever is greater. (90.380(2)(b))

Posting After Rental

If a governmental agency posts your dwelling as unsafe and unlawful to occupy, but does so after you have entered into a rental agreement with your landlord, and the conditions were not caused by you, then you may immediately end the agreement by giving written notice and the reason for the termination.

If the problems were not caused

by the landlord's negligence, the landlord may also end the tenancy with a 24-hour written notice of termination and the reason for termination.

Within 14 days, you may recover:

- all deposits and prepaid rent owed to you; and
- all rent prepaid for the month the termination happened (prorated if applicable) (90.380(6))

Imminent and Serious Threat to Health & Safety

You may immediately end a rental agreement if you discover conditions within 6 months of moving into any rented premises which you did not cause and which pose an “imminent and serious threat” to your health or safety. The example that prompted the term was the use of homes to manufacture methamphetamines. If such a situation arises, you must give the landlord verbal or written notice of the termination and the reason. (90.380(7))

Note *The property does not have to be posted by a government agency for the tenant to recover damages under this section.*

If the condition existed when you moved in, you are entitled to recover from the landlord within 4 days:

- all security deposits;
- all prepaid rent; and
- any rent already paid for that month, prorated to the day you move out.

You can have the money returned either at the landlord's normal place of business or by first class mail.

\$Penalty *If the landlord knew, or should have known, of the poor conditions, you may be able to recover either 2 months' rent or twice the actual damages (90.380(7))*

Damages for Physical & Emotional Distress

The courts recognize that a tenant's stake in a rented house or apartment is more than purely financial. When tenants are abused by a landlord, or forced to live in substandard conditions, they often lose more than the benefits of a business agreement; they can also lose health and peace of mind. The courts provide a remedy for these types of damages.

You may recover damages for any emotional distress caused if a landlord deliberately:

- locks you out;
- shuts off your utility service (90.375);
- retaliates against you for asserting your rights (90.385);
or

- destroys property left behind after you move out. (90.425)

If you are injured as a result of a violation of the landlord's obligations, you can recover typical personal injury damages as well as monetary costs resulting from the violation.

Other Sources of Remedies

The Act is not the sole source of remedies on which tenants can rely. For example, if a landlord assaults you (or if the tenant assaults the landlord), damages can be had on the grounds of civil assault. A tenant can also sue for damages for personal injuries caused by a code violation, whether or not the tenant also has a claim that the condition violated the Act.

Regular Terminations

Week-to-Week & Month-to-Month Agreements

These agreements may be terminated by either the tenant or the landlord after delivery of proper, written notice (10 days in the case of weekly agreements and 30 days for monthly agreements). (90.427)

Note *It is best to state the actual date of termination to avoid confusion as to when the 30 days begins. If the end date does not coincide with the end of the rental period, rent will be prorated. Remember that a notice served by mail must add 3 days to the 30 days, and the notice must state the fact and extent of this extension. (90.155(2))*

Lease Agreements

Lease agreements terminate as specified in the lease unless the tenant or the landlord exercises a right to terminate for cause. (*See Tenant Remedies for Lack of General Repairs; Early Terminations, and Eviction for Cause*)

Shutting It All Off

When you move, make sure you contact all the utility companies you pay directly, to tell them the date to shut off services and close your account. If you don't do this, you may be billed for the next tenant's services. The individual whose name appears on the bill is legally responsible for its payment.

Cleaning It All Up

The condition in which you leave the rental should largely determine how much of the deposit the landlord will refund to you, and whether you will be held liable for damages.

You should return the rental in the same condition as when you moved in, except for normal wear and tear. A few weeks before moving out, ask the landlord to walk through the unit with you. This is not required by law, but many landlords will do it. Regardless of whether your landlord does or not, bring a friend along to be a witness to the condition you leave the place in. Go through the Inven-

tory and Condition Report you used when you moved in. If the landlord notices minor damages that are easily repaired, try to make the repairs before moving out. You can also take photos or video to document the condition you left the place in.

The rental should be cleaned thoroughly and left in good condition. Tenants who leave a rental in good condition may be able to use their landlord as a reference for future rentals (see *Recovering the Deposit*). The keys should be returned to the landlord after everything is moved out and the place is clean.

Early Terminations

If a tenant moves out before giving appropriate written notice to end a month-to-month agreement, or before the end of a lease, the tenant may be responsible for all or part of the remaining rent until the tenancy would have otherwise ended.

An irregular termination can also cost the tenant all or part

of a deposit, and can result in a landlord suing the tenant for the remaining unpaid rent.

Month-to-Month Agreements

In month-to-month agreements, you should notify the landlord as soon as possible that you will be leaving, even if the notice will be given less than 30 days before the tenant moves. This notice should state when the unit will be available for a new tenant. The notice should also state that the tenancy will terminate on a date 30 days after the notice is delivered (or after the 33rd day if mailed). (90.427(2)) That way, even if you move out early, you cannot be held liable for rent beyond the 30 days.

Lease Agreements

In lease agreements, the notice serves to tell the landlord that they need to begin looking for a new tenant. Before giving notice, you should be certain that you can be moved out by the termination date. Otherwise, the landlord can bring an eviction action based on your notice.

Exceptions for Tenants Serving in the Armed Forces

If you are enlisting, serving, or ending your service in the armed forces or member of a National Guard, or a member of the Public Health Service assigned to work with the Army or Navy, you may terminate your rental agreement without suffering a penalty, fee, or loss of deposit based on that termination. You must provide your landlord with proof of official orders, and you must give notice that is the later of:

- 30 days;
- 30 days before the earliest reporting date on orders for active service;
- A date specified in the notice;
- 90 days before your service ends, in the case that you are terminating your are ending your service with the armed forces (90.475)

Additionally, if you are a state service member who is called into active service by the Governor you may end a rental agreement without a fee, penalty

or loss of deposit by giving written notice of 30 days after the next rent payment is due, or the last day of the month after the month in which you give notice, whichever is earlier. You must provide proof of official orders showing you are a state service member. (90.472)

Exceptions for Survivors of Domestic Violence, Sexual Assault or Stalking

If you are a survivor of domestic violence, sexual assault or stalking, you may be able to terminate your rental agreement with 14 days notice without having to pay a fee due to that termination. To give notice in this situation, provide your landlord with written notice that includes:

- a request to be released from the rental agreement;
- the date you want the tenancy to end;

and either:

- verification that you are under a valid order of protection (restraining order); or

- a police report, conviction, or “qualified third party verification” form (see sample form in Appendix D) stating that you have survived domestic violence, sexual assault or stalking in the last 90 days.

Landlord’s Duties

The law provides that:

- the landlord must take reasonable steps to find a new tenant (“mitigate losses”);
 - the former tenant’s responsibilities end as soon as a new tenancy begins; and
 - the landlord may not recover rent from the former tenant if the landlord fails to make reasonable efforts to re-rent the premises as soon as notice has been given. (90.410(3))
- For example, if the former tenant can find someone who can take over as a new tenant, the landlord will need a good reason to reject the new tenant in order to hold the old tenant responsible for any future rent.

“Fix or I Quit”

ORS 90.360(1) permits a tenant to serve a written “fix or I quit” notice if the landlord “materially” violates the habitability requirements of the landlord’s obligations. (See *Fix or I Quit*)

If the landlord fails to remedy the problem within the time allowed, the tenancy terminates on the day specified in the notice. (Remember to add 3 days for mailing.) If you terminate in this manner, you are not responsible for any rent due after the termination, and are entitled to recover prepaid rent and any otherwise refundable deposit. (90.360(5)) (See *Fix or I Quit*)

Other Irregular Terminations

Other violations which give a tenant the right to terminate a rental agreement are:

- lockout and utility shutoffs by the landlord (90.375);
- abuse of the right to access (90.322(8));
- a retaliatory rent increase, service decrease, or threat of

eviction (90.385(1), 90.375); and

- materially dangerous or unhealthy dwelling (90.380).

A tenant who relies upon any of these violations for the right to prematurely end a rental agreement should promptly notify the landlord in writing, and it's recommended to consult with an attorney in advance. A court is unlikely to let a tenant out of a long lease because of an unlawful entry which occurred months before the tenant decided to leave. Written notice is not expressly required by any of these statutes, but it can be important evidence if the dispute ends up in court.

Recovering the Deposit

A landlord must return any unused portions of a deposit within 31 days after you have moved out, (90.300) provided that you have done all of the following:

- paid all the rent on time;
- given suitable notice of termi-

nation;

- returned the keys; and
- left the unit in good repair.

The landlord must also deliver, within the same period, a written statement of the amounts and reasons for all deductions the landlord is taking from the deposit.

Note

 *If you don't get a refund because the landlord or the post office didn't have a forwarding address, the court will not hold the landlord responsible.*

The amount that the landlord can deduct from the deposit is limited to the reasonable amount needed to:

- make up for any unpaid rent or other unpaid costs as per the rental agreement; and
- repair damages to the premises caused by the tenant, not including normal wear and tear. (90.300(4) and (5))

When you move out, it is best to leave the unit as clean as it

was when you moved in, and get the landlord or a reliable witness to inspect it with you. The list below covers areas for which landlords frequently deduct if they are not clean:

- bathroom, walls, fixtures, floors, and all tiled areas;
- kitchen, including range, refrigerator, cabinets, counter, sink and floor (including the floor under appliances, such as the refrigerator);
- closets;
- furniture;
- floors, perhaps including shampooing rugs, sweeping balconies, and scrubbing linoleum and wood;
- drapery rods, drapes; and
- ashes removed from fireplace.

You are not required to leave the place cleaner than you found it, but this list contains details which landlords often claim are overlooked by tenants.

If there is a deposit and a cleaning fee, the tenant is not respon-

sible for cleaning whatever the fee is for (e.g., if it is for rugs, you don't need to clean the rugs). The landlord may not charge both a fee and a deposit for the same cleaning, unless it costs even more than the fee to repair damage or clean that item.

"Normal Wear & Tear"

You must leave the unit in the condition you found it, minus normal wear and tear. Normal wear and tear often includes worn-out rugs, furniture, and sometimes paint. Normal wear and tear does not include broken windows or furniture, cigarette burns, and dirty kitchens or bathrooms.

Tell the Landlord You're Moving

Often the landlord is not available to inspect the dwelling. In that case, plan ahead, send a letter which outlines your planned cleaning and lists any damage. If you send it early enough, it could be part of your 30-days notice. The letter might look like the following:

Date:

Dear _____,

I plan to vacate _____ on _____.

This letter is the 30-days' notice I am required by law to send you.

I recently inspected my dwelling and found the following damage, beyond normal wear and tear, for which I am responsible and will not be repairing:

With the exception of the damage listed above, I believe the dwelling will be left in as good a condition as it was when I rented it, minus normal wear and tear. I believe I am entitled to a refund of \$_____ of my deposit.

If you disagree with my estimate, please contact me to arrange an inspection as soon as possible. Please mail my refund and an itemized accounting within 31 days (as required by law) to: _____

I am sending this notice by first class mail, and have added 3 days to the 30-day notice period. (*or - "I am hand delivering this notice."*)

Sincerely,

You should hand deliver or send the letter by first class mail 3 days before the 30-day period begins to make sure the landlord receives the notice on time. If mailed, the notice should state that 3 days have been added to the 30-day period. The tenant can get a “certificate of mailing” from the post office for proof of the date of postage. Note that this is different from certified mail. With certified mail, if the landlord refuses to sign for certified letters, they will not count as received. It is recommended to obtain a “certificate of mailing” instead.

Note *It is illegal to make the return of a deposit contingent on a tenant's remaining for a specified length of time (e.g., “The deposit is refundable if you stay longer than 6 months.”) (90.300(6)) However, this does not prohibit a non-refundable fee for such a purpose.*

Interest on the Deposit

Oregon does not require the landlord to pay interest to you on your deposit. If the rental is

managed by a real estate licensee, all interest earned on the deposit (except prepaid rent) goes to a fund administered by the Oregon Housing and Community Services Department. (458.350) The fund is used to provide housing for low-income people.

Unreturned or Misused Deposits

The landlord has 31 days to return the deposit or return a portion of it or none of it, and provide an accounting listing how the deposit was used. If the landlord fails to do so, you may be entitled to twice the amount:

- withheld without a written accounting; or
- withheld in bad faith.

If the landlord refuses to return the deposit or neglects to provide you with an accounting within 31 days, you may sue in Small Claims Court.

Contesting Use of the Deposit

If you disagree with the landlord's accounting, discuss it with

the landlord. If an agreement cannot be reached, you may decide to contest it in court.

You should be prepared to show exactly how the unit was left and to prove that the items the landlord claimed in the accounting they used the deposit for were either:

- not done as claimed; or
- not necessary because the tenant had already done them; or
- were not the tenant's responsibility because such work had not been done upon moving in.

If the landlord gives an accounting in good faith and refunds an amount which the court finds to be less than the tenant should

have received, the court should award the tenant the difference.

\$Penalty *Tenants can receive up to twice the amount that should have been refunded if the court finds that the landlord withheld the money without an accounting or in bad faith (including an accounting which was made in bad faith). (90.300(14))*

The landlord may, however, assert any claim for damages against the tenant. For example, a tenant may be entitled to \$300 because the landlord failed to refund a \$150 deposit and gave no accounting, while the landlord could argue that the \$300 should be reduced because the tenant broke a window which cost the landlord \$75 to repair.

Evictions & Other Landlord Remedies

Forcible Entry and Detainers

A Forcible Entry and Detainer (FED) is the legal term for an eviction. A landlord cannot evict a tenant without a legal order (FED). If a tenant does not move by the day on the notice, the landlord must file an FED at the County Courthouse.

Note  *A tenant who is unable to pay the rent, and a landlord who isn't receiving the rent, may find that a settlement is best for both parties, before or after the landlord brings the FED action. For example, a tenant with a lease may want to ask his landlord for a release from the remainder of the lease in return for agreeing to move out more quickly or sparing the landlord the time and expense of bringing an FED action.*

With any eviction notice, if the tenant does not leave within the specified time, the landlord must take the tenant to court to recover possession of the premises.

Serving Notices

With rare exception (e.g., when a lease expires on the given date), all evictions must start with a termination notice.

All written notices from one party to another may be served by personal delivery or by “first class mail” (not certified or registered mail). If a notice is served by mail, 3 days must be added before the notice will take effect, and the fact that the notice has been extended by 3 days must be stated in the notice. (90.155(2))

Note  *The notice period begins the day after the notice is mailed or delivered and lasts until midnight of the last day of the notice period. (90.160)*

The only exceptions to the above are for 72-hour and 144-hour nonpayment of rent notices, 48-hour notice of drug and alcohol free housing violation, and most 24-hour notices.

Nail and Mail

Notices may be served by “nail and mail” if it is so specified in the rental agreement. This means that one copy is securely attached to the tenant’s front door, and another is mailed first class, in which case there is no 3-day mail extension. (90.155)

Types of Termination Notices

“Termination notices” are from the landlord to the tenant, without the court’s involvement. “Evictions” are the formal court process after a termination notice period is up.

Warning! *Evictions go on the tenant’s record, making it difficult to find housing later. Many landlords will not rent to people who have had an eviction within the last five years.*

Termination Without Cause: The 30-Day Notice Without Cause

The landlord may terminate a week-to-week tenancy by giving the tenant 10-days’ written notice, and a month-to-month

tenancy by giving at least 30-days written notice. This can occur regardless of when the rent is due and regardless of any prepaid rent, such as “last month’s rent.” If the landlord gives a termination notice and then later accepts rent that goes beyond the notice period, they may waive their right to evict the tenant.

If the termination date does not coincide with the usual day of rent payment, rent is prorated. (90.427(3)) (See *All About Rent*)

The landlord is not required to state the reason for the termination. However, landlords cannot use Termination Without Cause to discriminate or retaliate against a tenant. (See *Discrimination, and Retaliation*)

Termination for Cause: the 30-Day Notice For Cause

The landlord may serve a notice terminating the tenancy for cause (90.392) when the tenant:

- “materially” breaches the

rental agreement (this includes breaches such as not paying a late charge or utility charge);

- violates the tenants' obligations (See *Tenant Rights and Responsibilities*)
- materially fails to comply with the terms of recovery in drug and alcohol free housing (only if the tenant has lived there for more than 2 years); or
- fails to pay rent

The notice must:

- specify how the tenant has violated the rental agreement or obligations;
- state that the tenancy will end on a date which is at least 30 days after the receipt of the notice;
- state that the tenant can fix the violation, suggest a possible remedy, and set a date by which the tenant must fix the situation

The tenant usually has 14 days to fix the problem. A timely remedy will prevent the landlord from evicting on that notice.

Recurring Problem

If essentially the same problem (with the exception of failure to pay current month's rent) recurs within 6 months, the landlord may deliver a written notice giving at least 10 days before the termination of the agreement. (90.392(5)) The landlord is not required to give the tenant a second opportunity to fix the problem.

Note

 *Many month-to-month landlords feel that they gain nothing by terminating for cause because both processes take 30 days and termination without cause is subject to fewer defenses.*

Termination for Pets: The 10-Day Notice

A landlord may terminate a tenancy on 10-days' notice for violation of a rental agreement which prohibits pets capable of causing damage to persons or property. (90.405)

In this instance, the tenant has 10 days to remove the pet or face termination.

If the same breach recurs within 6 months, the landlord may terminate on 10-days' notice without giving the tenant another opportunity to remove the pet. (90.405(3))

Note *This pet restriction is enforced broadly; for example, it may include potential water damage caused by a fish tank.*

Termination for Nonpayment of Rent: The 72-Hour or 144-Hour Notice

In a week-to-week tenancy, if the tenant fails to pay rent within 5 days, (including the first day rent is due), the landlord may serve a 72-hour written notice. (90.394(1))

In month-to-month or lease agreements, if the tenant fails to pay rent within 7 days (including the first day rent is due), the landlord may serve a 72-hour written notice no sooner than the 8th day. The notice must give the tenant at least 72 hours to pay or leave. (90.394(2)(a))

If the tenant is 4 days past due, the landlord may serve a 144-hour written notice on or after the 5th day that rent is late. The notice must allow 144 hours (6 days) for the tenant to pay the rent or leave. (90.394(2)(b))

Note *Both of these notices may be served by "nail and mail" if the agreement so provides. (See Nail and Mail)*

Both forms of notice must specify the date and time by which the tenant must pay the rent. If the tenant pays the rent within the 72 or 144 hours, the landlord cannot evict based on that notice.

The tenant can pay by mailing the rent within the allotted time unless:

- the notice is personally served; and
- the rental agreement and the notice state that payment must be made at a specific location; and
- the location is available to the

tenant throughout the notice period's hours (e.g., a mail slot in the manager's door); and

- the location specified for payment is either on the premises or at a location at which the tenant has made all of the previous payments in person. (90.155)

Termination for Dangerous Tenants, Illegal Sub-Tenants, and Drug Dealers: the 24-Hour Notice

The Act allows a landlord to end a tenancy on 24-hours written notice specifying the cause if the tenant, someone in the tenant's control, or the tenant's pet does any of the following: (90.396)

- seriously threatens to inflict personal injury or inflicts substantial injury upon a person on the premises other than the tenant;
- recklessly endangers a person on the premises other than the tenant by creating a serious risk of substantial personal injury;
- inflicts substantial personal injury upon a neighbor living

in the immediate area.

- intentionally inflicts substantial damage to the premises;
- occupies a unit in violation of a written "no subletting or assigning" clause if the lawful tenant is gone and the landlord has not knowingly accepted rent from the occupant. (90.403)
- commits any act which is outrageous in the extreme on the premises or in the immediate vicinity. (90.396(1)(f))

Note *"Outrageous in the extreme" covers conduct that is well beyond merely annoying or obnoxious. It includes prostitution, delivery or manufacturing or possession of illegal drugs, intimidation which includes gang activity, and burglary. Medical marijuana use pursuant to ORS 475.300 and possession of less than one ounce of marijuana is not subject to the 24-hour notice rule.*

The landlord can also serve a 24-hour written notice terminating a tenancy within 30 days of discovering that the tenant provided false information on

the rental application within the past year regarding a criminal conviction.

Note *These notices may be served by “nail and mail” except the one for an illegal subtenant. (90.155(4)(a))*

Termination for “Drug and Alcohol Free Housing” Violation: The 48-Hour Notice

If a tenant who has lived for less than 2 years in a certified drug and alcohol free housing violates the terms of the housing, the landlord may deliver a 48-hour eviction notice, specifying the date and time that the tenancy will end.

The notice must state that the tenant can fix the violation within 24 hours by changing conduct or otherwise, in which case the rental agreement will not end.

If the same violation occurs within 6 months, the landlord may end the agreement with a 24-hour written notice without giving opportunity to fix the problem again. (90.398)

Illegal Activity

The landlord must start the eviction process by a no-cause, for-cause, or 24-hour notice if a tenant is involved in illegal activity. (90.396) If a tenant is aware of illegal activity in the premises, they should take steps to notify the landlord and proper authorities. The tenant may be considered part of the activity unless they can prove they were trying to stop it.

Retaliation

Many tenants are hesitant to take actions to enforce their rights because they fear that the landlord will retaliate, either by evicting them, or by increasing rent or decreasing services (such as shutting off the power). The Act prohibits retaliatory conduct, and retaliation may serve as grounds for fighting an eviction. (90.385)

Your landlord cannot increase rent, decrease services, serve a termination notice, evict or threaten to evict you if the motive is to retaliate against you

Chapter 9: Evictions And Other Landlord Remedies

Types of Termination Notices	
Notice	Reason
30-day Without Cause (month-to-month) 10-day Without Cause (week-to-week)	Landlord does not have to give a reason.
30-day For Cause (month-to-month) 7-day For Cause (week-to-week)	Violation of the rental agreement.
10-day	Keeping a pet which is not allowed by the rental agreement; Recurrence of problem from a prior for-cause notice.
72-hour	Nonpayment of rent after 7 days in month-to-month or lease agreements. After 4 days in week-to-week.
144-hour	Nonpayment of rent after 4 days.
48-hour	Violation of a Drug and Alcohol Free Housing agreement.
24-hour	Dangerous tenants, illegal sub-tenants, drug dealing, and/or other illegal activities.

because you complained in good faith, or told the landlord in writing an intention to complain to the appropriate agency about the landlord violating:

- discrimination laws or regulations;
- laws or regulations regarding delivery of mail;
- building, health or housing codes;

Your landlord also cannot retali-

ate in the ways described above in response to the following actions:

- you have joined or organized a tenants' union or organization;
- you has asserted, or expressed intent to assert any of your rights as a tenant secured by federal, state, or local law;
- you have testified against the landlord in any judicial legislative or administrative

- proceeding; or
- you have successfully defended against an eviction action brought by the landlord within the last 6 months (unless the eviction defense was only successful because the landlord failed to deliver the termination notice in the correct manner or with the correct termination period)

If you believe that you are facing a rent increase or being evicted for any of the above reasons, you should contact a lawyer. Retaliation is extremely difficult to prove in court.

Legal Eviction Despite Retaliation

Despite a retaliation defense, the landlord may legally evict a tenant in the following cases:

- if the tenant originally caused the problem that is at issue;
 - if the tenant is in the default of rent (after deduction for any damages due to and claimed by the tenant, except claims for retaliation damages); or
 - if compliance with code re-
- quires depriving the tenant of the unit.
 - if the tenant's complaint to the landlord was made in an unreasonable manner, an unreasonable time, or in way that was unreasonably harassing the landlord.

Even under such circumstances the tenant may be entitled to damages.

The Eviction Process

If a landlord has served an termination notice (or the tenancy has expired by its own terms), but the tenant remains after the termination date, the landlord must file a court action to recover the premises from the tenant. The landlord may not force a tenant out until a judgment of possession has been awarded by the court. The tenant can also voluntarily deliver the rental to the landlord. (90.427, 90.147)

Warning! *Everything possible should be done to avoid an eviction! Having an eviction judgment on your record may make it harder to rent*

in the future. (See Tenant Screening Services) It may be possible to arrange a dismissal as the final result of any successful settlement of the eviction action if you move out as agreed. Tenants should get a copy of the dismissed FED to show to future landlords when applying for rental. The court may or may not be willing to cooperate with this approach.

The Process

Being evicted follows a definite order starting from before the landlord gives the tenant notice.

1. The Problem. The tenant might not know that there is a problem if the landlord doesn't expressly mention it, but usually the landlord informs the tenant. This is the time to try to settle it.

2. The Termination Notice.

Every notice must be in writing and must give the tenant the full amount of time from the date on which they receives it. The landlord should specify the date and time of termination in the notice. If a tenant receives an FED after moving, they should

show up to "first appearance" to say that they have moved. (See below)

3. The Filing. The landlord starts a Forcible Entry and Detainer, or "FED" by filing a "complaint" and a "summons" along with a copy of the termination notice in district court. A landlord's employee or agent (including a property manager) may also handle a FED for the landlord. (105.130(4))

4. The Summons. The court clerk mails a copy of the complaint and summons to the tenant by first class mail. The landlord must also pay for a sheriff or private process server who attempts to give another copy to the tenant personally. If the tenant is not home, the process server tapes a copy to the tenant's front door.

The summons and complaint will give the tenant a "first appearance" date, which is usually 7 days after you receive the papers, excluding weekends and holidays.

5. First Appearance. Never ignore the Summons! Always show up at first appearance, even if you think the problem is resolved. If the landlord shows up at first appearance and the tenant does not, the landlord will automatically be awarded possession of the premises. The tenant may also have to pay any filing and serving costs incurred by the landlord.

With this judgment, the landlord can have the tenant removed from the premises by the sheriff. The eviction will also appear on your record.

If the tenant shows up and the landlord does not, the tenant should ask for the case to be dismissed and the court may order costs.

If both parties show up, the judge may encourage the parties to reach a settlement. Often, tenants will agree to move if the landlord will allow more time to move; or landlords will agree to let a tenant stay if the tenant pays the rent or fixes the

problem. Some courts have free mediators available to help both sides reach agreement.

Note  *If the landlord agrees to let the tenant stay, the case should be dismissed. If the tenant has 10 days to leave, the judgment should say so.*

If the parties do not agree to resolve the case, it will be set for trial which should be within 15 days and the tenant must file an answer by the end of the first court day.

Note  *The tenant may be required to pay rent into court if the trial is delayed beyond this, unless the delay is requested or caused by the landlord. (105.137)*

If the case is settled before first appearance, tell the judge at the first appearance so you know the result in the court's files is the same as your agreement.

The Trial

If the case goes to trial, the landlord will have to pay an ad-

ditional amount to make up the difference between the original filing fee and the normal filing fee for a district court case. It is common for the trial to occur within a week of the first appearance. It is strongly encouraged to bring a lawyer to represent you.

Penalties

If there is a trial, the party that wins may be awarded attorney fees. (90.255) The tenant might ask the landlord to waive the costs for filing and serving the FED in return for consent to a judgment without a trial. (See *Defending Against an Eviction*) If these costs are not waived they will be entered as part of the judgment against the tenant.

If the judgment must be enforced to remove the tenant, the costs of enforcement will also be included. If the tenant's holdover is willful and not in good faith, the court may award the landlord the cost of any actual damages resulting from the holdover, including the rent money owed from the expira-

tion of the rental agreement until the tenant releases possession back to the landlord. (90.427(4))

Note *The court can award attorney fees against the tenant only if the tenant decides to go to trial. (105.137(3)) If the landlord has or will get an attorney for trial, this may be an important reason to settle at first appearance.*

Removing a Tenant

The landlord is not entitled to any “self-help” procedures. For example, the landlord may not move out a tenant's belongings and/or force a tenant out by cutting off essential services. If the landlord uses a self-help procedure, the consequences could be:

- losing any right to recover unpaid rent, if the landlord unlawfully seizes and retains the tenant's belongings;
- charges of assault if the landlord uses physical force; or
- not more than twice the periodic rent or twice the actual damages, whichever is greater. (90.425(17))

Once a judgment has been given by the court, a sheriff will serve the tenant a 4-day notice of restitution which means that after 4 days, the sheriff will come back to escort the tenant out. Only a sheriff may actually remove the tenant. The landlord has three options to remove a tenant's property:

- if the sheriff has enforced the judgment, the landlord may elect to pay the moving and storage charges and have the sheriff remove the property;
- if the sheriff has enforced the judgment, the landlord may elect to remove the property herself or herself and store it according to the abandoned property section (90.425) (see *Dealing with Personal Property after the Tenant Leaves*); or
- if the tenant has been continuously absent from the premises for at least 7 days after a judgment (and that judgment has not been enforced by the sheriff), the landlord may remove the property and store it according to the abandoned property section. (90.425)

To recover the personal property, see *Dealing with Personal Property after the Tenant Leaves*.

Defending Against an Eviction

Note  If you intend to defend against the eviction, you should have a lawyer. The price paid for having an eviction on your record may be greater than the benefit of proving a point. In addition, a landlord who brings an attorney is entitled to an award of attorney fees if you lose. If you bring an attorney and win, you are also entitled to an award of attorney fees.

Sometimes an eviction may be legal but terribly unfair. The landlord can give you a 30-day notice for no reason at all but usually there is a reason, even if it's not written down. Ask the landlord, ask others, and find the reason.

If the reason is a new policy decision, for example, the owner wants no pets on the premises, you might be able to negotiate if you join with other tenants.

Warning! *If the court finds that the tenant acted willfully and in bad faith (e.g. knowingly made up a false defense), the court may award the landlord up to twice the damages or twice the actual rent, whichever is greater.*

Groundwork

“Groundwork” for defending against an eviction should begin immediately, regardless of whether or not you have actually received notice. (For example, if you have withheld rent due to the landlord’s failure to supply an essential service, be prepared to defend if the landlord tries to evict you.)

You should first contact your landlord, ask for an explanation, and try to reach a settlement to clear up the misunderstanding.

If negotiations don’t work and while your memory is fresh, write down such things as dates, what happened, possible witnesses, and any other information which may relate to your

eviction. Contact other tenants and ask if they have had similar experiences.

Getting a Lawyer

You should try to get a lawyer by the time of first appearance unless you can reach some form of agreement with the landlord which is acceptable to you. If you are unable to get a lawyer by the time of first appearance, ask the court for a day or so in which to find one. Be aware that if you use this delay, the court may ask you to pay rent into court if there is more than a 2-day delay.

Even if you are unable to get a lawyer to defend you, you are still entitled to a day in court. The law provides that a tenant who appears at first appearance without a lawyer has a right to go to trial by filling out an “answer form” which is available at the clerk’s office. The form is your opportunity to briefly state your case to the court, and it includes checkboxes for some common defenses, such as the landlord failed to make necessary repairs.

The answer must be filed with the court and a copy must be given to the landlord the same day as first appearance. The court will charge a small filing fee, but the first appearance judge can waive or defer the fee if you are of low-income.

The court will assign you a time and place of trial when you file the answer. See sample Answer Form in Appendix F.

Information from the landlord's summons and complaint should be used to fill in the blanks. You should then mark off the appropriate defenses and fill in the lines explaining why you think the landlord should not win the case.

Which spaces to check and which defenses will do the most good depend in part upon the kind of eviction notice the landlord is using.

Repairs Were Not Made

Check the first space in a nonpayment of rent eviction if you believe rent is not due

because the landlord did not make repairs and list the repair problems in the blanks provided as well as how you informed the landlord before the FED was filed.

At trial, you will have to show that the repair problems caused enough "damages" to equal or exceed the unpaid rent. These damages may include loss of rental value. Also, if you are not using an essential service remedy (90.365), you may be entitled to damages for any additional expenses which you had because of the repair problems - such as water-damaged property due to a roof leak. (90.360(2))

Note *Tenants have a responsibility to mitigate damage to their property that is occurring because of damages. For example, if the roof leaks, the tenant is responsible for moving the couch away from under the leak. (90.125)*

Any rent you lawfully deducted under the essential service remedy should not be due as rent.

You should assert that defense in the same way as if you were asserting a general habitability defense -- by checking the first space and listing the repair problems on the lines provided. (See *Eviction for Cause, and Tenant Remedies for Lack of Essential Services*)

Retaliation

This is the one to check if you have received a notice without cause and believe that the eviction is retaliatory. (See *Retaliation*)

Status as a Victim of Domestic Violence, Sexual Assault, or Stalking

This is the space to check if you believe your landlord is evicting you because of your status as a victim of domestic violence, sexual assault, or stalking. (See *Discrimination Against Victim*)

Eviction Notice is Wrong

This space applies if the landlord:

- gave no written notice;
- gave a notice which didn't allow the proper amount of

time to cure the violation (e.g., less than 72 hours to pay rent);

- used the wrong notice -- a 30-day notice without cause when you are not a month-to-month tenant, etc.

Space #4 - Any Other Defense

This is a place to list any of the numerous defenses which are not common enough for one of the first 3 spaces. For example, if you believe the eviction is based upon an unlawful discrimination, this is the place to say so (e.g., “the landlord is trying to evict me because of my race”). (See *Discrimination*)

The “any other defense” space is also appropriate when you are trying to show that rent is not due because you are entitled to damages for the following:

- enforcement of illegal terms (See *The Agreement Cannot Include...*);
- lockouts, abuse of access, or any substantial violation of the rental agreement by the landlord;

- the landlord is evicting for cause and you believe the cause did not exist, that it was not enough to permit eviction, that you fixed the problem within the time allowed (or the landlord refused to accept a fix), or that the rule in the rental agreement which the landlord claims was broken was an invalid rule.

Example: The lease violation was based upon a rule prohibiting guests, but the rule was adopted after the tenant moved in and without the tenant's consent.

Tip  *You should check all the spaces and fill in all the defenses you believe you have, but you should not check a space or state a defense that you don't believe in good faith exists. For example, "I don't have the rent" is not considered a defense.*

If, at the trial, the landlord claims you are trying to raise a defense which is not stated in your answer, the worst that can properly happen is that the landlord will get a delay in order to prepare to meet the defense. In other words, the answer does not limit the defenses available to you if you don't fill it out correctly.

Preparing for Trial

When preparing for the trial, remember that in most cases the court will only listen to testimony which you or your witnesses directly saw, heard, or otherwise perceived.

If an inspector looked at the repair problems, and you believe his testimony will help your case, you can subpoena the witness and any records with a form available at the court clerk's office.

Chapter 10 **After You Move Out**

Dealing With Personal Property

It is important to find a balance between the interest of the landlord in recovering the cost of handling and sorting a tenant's possessions and the tenant's interest in keeping their property.

If the landlord follows the procedures outlined in 90.425, the landlord will be able to recover all reasonable hauling, storage and disposal charges in most instances. If the landlord completely complies with 90.425 and acts in good faith the landlord has a complete defense against a lawsuit by the tenant for the loss or damage of the tenant's property.

However, if the landlord seizes or keeps control of the tenant's property without following the procedures, the tenant is not liable for any unpaid rent of willful or deliberate damage to the rental property. The tenant may also recover twice the amount of actual damage sustained by the tenant.

Removing Abandoned Property

The Act allows the landlord to take control of the tenant's abandoned personal property only under certain specific circumstances:

- when a lease expires or when the property is abandoned and the landlord believes the tenant has left the personal property with no intent of asserting any further claim over it;
- if the landlord has won an eviction and obtained legal order ending the tenancy and the tenant has been continuously absent for at least 7 days, and the landlord has not had the sheriff enforce the legal order; or
- if the landlord has won an eviction, used the sheriff's office to enforce the legal order, and the landlord has decided to take responsibility for the control, storage, and disposal of the tenant's property.

The landlord must notify the tenant by sending a notice

by first class mail to the most recent address known to the landlord.

The notice should state that the property will be sold as abandoned or otherwise disposed of if not removed by a specific date not less than 15 days after delivery of notice.

Storing the Property

The landlord must store the property in a safe place, but is entitled to the cost of storage, including actual storage charges for commercial storage.

If the tenant does not respond to the notice by the date specified for the sale, or fails to get the belongings within the time specified in the notice or within 15 days of the tenant's written response to the notice (whichever is later), the property is deemed abandoned.

Disposal of Property

After the notice of abandoned property is given to the tenant the landlord may:

- sell abandoned property at a public or private sale (79.5040(3));
- destroy or dispose of it only if the current fair market value of the property is less than \$500, or the cost of storage and sale probably exceeds the amount the sale would produce; or
- donate the property to a non-profit organization or to an unrelated person.

If the landlord sells the abandoned property, the landlord may deduct the costs of storing and selling the property, plus any unpaid rent owed.

If any money remains from the proceeds of the sale, it shall be sent to the tenant or held by the county treasurer for 3 years if the tenant cannot be found. If unclaimed, the money will go to the county's general fund. (90.425(13)(e))

A landlord who is found to have damaged a tenant's belongings by negligence may be liable to the tenant. In the event of de-

liberate and malicious damage, the landlord may be held for twice the actual damages, which may include emotional distress damages. It is extremely risky for a landlord to try to use the abandoned property remedies to lock out a tenant.

Recovering the Property

The tenant's remedies vary with the methods used in taking the property.

Sheriff-Removed Belongings

The tenant may recover some or all of the belongings by immediately filing a Claim of Exemption (contained within a sheriff's notice). If any belongings are not exempt, or even if no Claim of Exemption was filed, a tenant probably may recover the belongings by bidding at the sheriff's sale. Therefore, tenants should stay in touch with the sheriff's office to be informed of the time and place of the sale.

Notice of Abandoned Property

If the tenant receives a notice

from the landlord stating that the landlord considers the tenant's personal property to be abandoned, the tenant must act to remove the property by a specified date (no less than 15 days after deliver of the notice), or the landlord may sell or dispose of the property.

Landlord Storing Property

The Landlord may decide to take responsibility for the storage and disposition of a tenant's personal property after a sheriff has removed a tenant under legal order. The landlord's notice to the tenant must state that the tenant may pick up the property, by the specified deadline, without being charged removal and storage costs. (105.165)

A tenant may claim property that is being stored by the landlord by written or verbal notice. The minimum time allowed for a tenant to claim abandoned RV's, dwellings, or homes is 45 days. For all other abandoned property, the minimum time allowed for a tenant claims the stored property is 5 days if the

notice was served by personal delivery or 8 days if served by first class mail.

After the tenant responds to claim the stored property, the landlord must allow an additional period of time for the tenant to remove the property: 30 days for the RV's, dwellings or homes; 15 days for all other personal property, both starting at the date of response.

A landlord shall store the abandoned property in any place of safekeeping, including the dwelling until of the landlord's unit. However, dwellings and

homes must be stored only in the rental space. The storage charge for an abandoned dwelling or home may not exceed the amount of rent last paid for the space by the tenant.

The landlord must make the property available for removal by appointment at reasonable times. If the landlord fails to permit the tenant to recover the personal property (e.g., they try to impose an illegal charge), the tenant may recover twice the tenant's actual damage or twice the actual rent, whichever is greater, in addition to other possible damages. (105.165)

Checklist Before Signing A Lease

Have you read everything before you sign?

Read everything front and back very carefully and take all the time you need to do so. Once you sign a document, it is difficult to argue that you didn't read it.

Have you written it all down?

Even if the landlord doesn't use a written agreement, you should write everything down. Your written agreement should include all the terms you have agreed on at the time you sign it. Terms or promises not written into the agreement are unenforceable and often end up in court.

Never leave blanks.

Never sign anything with blanks to be filled in later. Either complete all blanks or draw a line through them.

Have any promises to make repairs at a later date been noted in writing?

Promises to make repairs when a landlord is trying to rent a

unit may be forgotten after time has passed.

Do you clearly understand what you are signing?

If you don't understand, ask the landlord to explain. Write down the landlord's explanation on a separate piece of paper and have both parties initial it as your mutual understanding of the provision. It may be hard to argue that you didn't understand something after you have signed it.

Don't be reluctant to cross out a word or even a whole paragraph.

The provisions you and the landlord write into the agreement by hand indicate that you have reached a mutual agreement. In most cases, the handwritten modification will be more effective and will be enforced by a court of law in spite of what the printed form says. Be certain that both parties initial any modification.

Have you carefully inspected the unit and noted any defects or damages in writing?

This can help avoid future disputes about breaks, damages, or cleanliness.

Did you get a copy of the signed rental agreement?

The landlord is required to give you a copy of the rental agreement, (90.220(3)) and it is best to get the copy in person at the time you sign it. If there is any later dispute, the first thing you need is the agreement. If you lose your copy of the lease, you may request that the landlord make you a copy at no more than 25 cents per page. (90.305(4b))

Renter's Rights and Tenant Resources:

Oregon Community Alliance of Tenants

The Community Alliance of Tenants (CAT) is a statewide, grass-roots, tenant-controlled, tenant-rights organization.

<http://www.oregoncat.org>

2710 NE 14th Ave.

Portland, OR 97212

telephone: 503-460-9702

Fax: 503-288-8416

RENTERS' RIGHTS

HOTLINE: 503-288-0130

Department of Justice Consumer Hotline

Cannot give legal advice about rental questions, but will provide a free copy of the Act and a guide to Small Claims Court. Open 8:30 a.m. To 4:30pm M-F. Also contact the hotline for rental referral agency complaints.

<http://www.doj.state.or.us/fin-fraud/index.shtml>

phone:

Salem area: (503) 378-4320

Portland area: (503) 229-5576

In Oregon (toll free): (1-877)

877-9392

Fair Housing Council of Oregon

The Fair Housing Council of Oregon promotes equal access to housing by providing education, outreach, technical assistance, and enforcement opportunities related to discrimination that violates state and federal law.

<http://www.fhco.org>

1020 S.W. Taylor St., Suite 700

Portland, OR. 97205

phone: 503-223-8197

Legal Referrals and Information:

ASUO Legal Services

Provides free legal services to all enrolled students at the University of Oregon. Certain services require filing and document preparation fees.

<http://www.uoregon.edu/~legal/>

Suite 334 Erb Memorial Union

University of Oregon

Eugene, OR 97403

telephone: 541-346-4273

Legal Aid Services of Oregon

Legal Aid Services of Oregon is a non-profit organization that provides representation on civil cases to low-income clients throughout Oregon.

<http://www.lawhelp.org/program/694/index.cfm>

telephone: see website for local legal aid office contact information

Oregon Law Center

The Oregon Law Center works closely with other legal aid programs and private attorneys to provide free civil legal services to low income individuals and families.

<http://www.oregonlawcenter.org>

Oregon Law Help

A project of the Oregon Law Center, Legal Aid Services of Oregon, and other legal service organizations, their website provides a directory of links to helpful information, including landlord/tenant law, credit and debt, and student loans.

<http://www.oregonlawhelp.org>

Oregon State Bar

Provides online information on landlord/tenant law along with other legal information. Also operates a Lawyer Referral Service that will get you an in office consultation with a recommended lawyer for \$35.

<http://www.osbar.org/public>

16037 SW Upper Boones Ferry Rd
Tigard, OR 97224

telephone: 503-620-0222, or
1-800-452-8260

lawyer referral service: 503-684-3764 or 1-800-452-7636

Oregon State Bureau of Labor and Industries, Civil Rights Division

To file a discrimination complaint contact the Civil Rights Division near you.

<http://www.oregon.gov/BOLI/CRD/index.shtml>

800 NE Oregon St., Suite 1045
Portland 97232

telephone: 971-673-0761

Fax: 971-673-0762

PSU Student Legal and Mediation Services

Provides free legal services to all enrolled students at Portland State University. Certain services require filing and document preparation fees.

<http://www.slms.pdx.edu/>
M340 Smith Memorial Student Union

1825 SW Broadway
Portland, OR

telephone: 503-725-4556

Appendix B: Resources

Low Income Housing Resources: Housing Connections

Housing Connections is a web-based community service for the Portland metro area that connects providers of low income and special needs housing and housing services to renters who are looking for these types of housing opportunities.

<http://www.housingconnections.org>

621 SW Alder, Suite 810
Portland, OR 97205
phone: 503-802-8562

Oregon's Housing Authorities

Housing Authorities provide affordable housing options and information for low income Oregonians. The website provides links to local housing authorities around the state.

<http://www.oraoha.org>

P.O. Box 489
Tualatin, OR 97062
Phone: (503) 968-7161

Utility and other assistance resources:

Low Income Energy Assistance Program (LIEAP)

The Low Income Energy Assistance Program (LIEAP) is federally funded through the U.S. Department of Health and Human Services and is designed to help low-income households with home heating costs.

http://www.oregon.gov/OHCS/SOS/Low_Income_Energy_Assistance_Oregon.shtml

Oregon Food Bank

Oregon Food Bank fights hunger and poverty by distributing donated food to a network of non-profits in Oregon and Clark County, Washington

<http://www.oregonfoodbank.org>

7900 N.E. 33rd Drive
Portland OR
Telephone: 503-282-0555
Fax: 503-282-0922

Oregon HEAT

Oregon Home Energy Assistance Team is a non-profit organization that develops and coordinates resources to help low-income Oregonians meet their energy needs and achieve energy self-reliance through energy education and advocacy.

<http://www.oregonheat.org/>

7881 SW Mohawk St.

Tualatin, OR 97062-0127

Phone: 503-612-3790

Fax: 503-612-3716

Public Utility Commission

The PUC ensures consumers receive utility service at fair and reasonable rates. Their Consumer Services staff can help resolve billing and service conflicts between customers and companies.

<http://www.puc.state.or.us>

550 Capitol Street N.E. Suite 215

Salem, Oregon 97301

Phone: 503-378-6600 or 1-800-522-2404

Credit Agencies

Annual Credit Reports

The Fair Credit Reporting Act requires each of the nationwide consumer reporting companies – Equifax, Experian, and TransUnion – to provide you with a free copy of your credit report, at your request, once every 12 months. The three companies have set up one central website, toll-free telephone number, and mailing address through which you can order your free credit report. Beware of other websites that advertise free credit reports or free credit scores, many of them actually require you to sign up for an expensive monthly “credit monitoring” service. You may also contact the individual credit reporting agencies to request a free credit report if the information therein was used to deny you housing.

To Order Your Free Annual Credit Report

- Visit www.annualcreditreport.com
- Call toll-free: 1-877-322-8228

- Mail your completed Annual Credit Report Request Form to:
Annual Credit Report
Request Service
P.O. Box 105281
Atlanta, GA 30348-5281

If you want to mail in your Annual Credit Report Request form, you can find one at:
<http://www.ftc.gov/bcp/online/include/requestformfinal.pdf>

Contact information for individual credit reporting agencies:

Equifax:
1-877-576-5734
www.equifax.com

Experian:
1-888-397-3742
www.experian.com/fraud

TransUnion:
1-800-680-7289
www.transunion.com

Sample Verification To Landlord For Domestic Violence Victims

QUALIFIED THIRD PARTY VERIFICATION

Name of qualified third party: _____

Name of tenant: _____

PART 1. STATEMENT BY TENANT

I, _____ (Name of tenant), do hereby state as follows:

(A) I or a minor member of my household have been a victim of domestic violence, sexual assault or stalking, as those terms are defined in ORS 90.100.

(B) The most recent incident(s) that I rely on in support of this statement occurred on the following date(s):

_____ The time since the most recent incident took place is less than 90 days; or

_____ The time since the most recent incident took place is less than 90 days if periods when the perpetrator was incarcerated or was living more than 100 miles from my home are not counted. The perpetrator was incarcerated from _____ to _____. The perpetrator lived more than 100 miles from my home from _____ to _____

(C) I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

(Signature of tenant)

Date: _____

Appendix D: Sample Verification To Landlord For Domestic Violence Victims

PART 2. STATEMENT BY QUALIFIED THIRD PARTY

I, _____ (Name of qualified third party), do hereby verify as follows:

(A) I am a law enforcement officer, attorney or licensed health professional or a victim's advocate with a victims services provider, as defined in ORS 90.453.

(B) My name, business address and business telephone are as follows:

(C) The person who signed the statement above has informed me that the person or a minor member of the person's household is a victim of domestic violence, sexual assault or stalking, based on incidents that occurred on the dates listed above.

(D) I reasonably believe the statement of the person above that the person or a minor member of the person's household is a victim of domestic violence, sexual assault or stalking, as those terms are defined in ORS 90.100. I understand that the person who made the statement may use this document as a basis for gaining a release from the rental agreement with the person's landlord.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

(Signature of qualified third party making this statement)

Date: _____

Fair Housing Protected Classes In Oregon

Protected Class	Federal (4)	State	Counties:		Municipalities:	
			Multnomah Co.	Benton Co.	Ashland (4)	Beaverton
	42 USC 3601 et seq.	ORS 659A-145 & 421	Mult. Co. Code 15.340 et seq.	Benton Co. Code Chapter 28	Ashland Mun. Code 10.110.010 et seq.	Beaverton City Code Chapter 5.16.015 et seq.
Race	X	X	X	X	X	X
Color	X	X	X	X	X	X
Religion	X	X	X	X	X	X
National Origin	X	X	X	X	X	X
Sex	X	X (5)	X	X	X	X
Familial Status (1)	X	X	X	X	X (8)	
Mental or Physical Disability	X	X	X	X	X	X
Source of Income (2)		X	X	X		X
Marital Status		X	X	X		X
Age over 18 (1)			X	X		X
Sexual Orientation			X (6)	X (6)	X	X
Gender Identity			X (7)	X		X
Type of Occupation (3)			X	X		X
Ethnicity						
Ancestry						
Domestic Partnership						

(1) generally doesn't apply with respect to housing for "older persons"

(2) most statutes provide exceptions for recipients of federal rent subsidy payments under 42 USC 1437f (Section 8) or income derived in an illegal manner

(3) this protection is derived from the definition of "source of income"

(4) certain religious organizations or private clubs are allowed to give members preference; certain owner-occupied units are exempt

(5) may not be protected if real property is such that protection would result in unrelated persons of opposite sex using same bath or bedroom facilities

Municipalities:								
Bend	Corvallis	Eugene	Hillsboro	Lincoln City	Lake Oswego	Portland	Salem	Springfield
Bend City Code 5.700 et. seq	Corvallis Mun. Code Chapter 1.23	Eugene City Code 4.613 et seq.	Hillsboro City Code Chapter 9.34.005	Lincoln City Code Chapter 9.14.050	Lake Oswego City Code Chapter 34.22.060	Portland City Code Chapter 23.01	Salem Municipal Code Chapter 97	Springfield City Code 5.558 et seq.
X	X	X	X	X	X	X	X	X
X	X	X	X	X	X	X	X	X
X	X	X	X	X	X	X	X	X
X	X	X	X	X	X	X	X	X
X	X	X (5)	X	X	X	X	X	X (5)
	X	X	X	X	X	X	X	X
X	X	X	X	X	X	X	X	X
	X	X	X		X	X	X	
X	X	X	X	X	X	X	X	X
X	X	X	X	X		X	X	X
X	X (6)	X (6)	X	X	X	X (6)	X (6)	
X			X	X	X	X (7)	X (7)	
	X	X				X	X	
		X						
		X	X	X			X	

(6) some exceptions apply (in certain owner-occupied units and property owned by a religious organization)

(7) some exceptions apply (in certain owner-occupied units and property owned by a religious organization); documentation of gender status may be required in some situations

(8) some exceptions apply (i.e.: where dwelling is less than 400 sq ft.; if state/federal housing; where regulations restrict occupancy)

Table data courtesy of Fair Housing Council of Oregon.

Sample Answer Form

IN THE _____ COURT FOR
THE COUNTY OF _____

(Landlord),)
)
Plaintiff(s),)
)
vs.) No.____
)
(Tenant),)
)
Defendant(s).)

ANSWER

I (we) deny that the plaintiff(s) is (are) entitled to possession because:

___The landlord did not make repairs.

List any repair problems:_____

___The landlord is attempting to evict me (us) because of my (our) complaints (or the eviction is otherwise retaliatory).

___The landlord is attempting to evict me because of my status as a victim of domestic violence, sexual assault or stalking.

___The eviction notice is wrong.

___List any other defenses:_____

I (we) may be entitled as the prevailing party to recover attorney fees from plaintiff(s) if I (we) obtain legal services to defend this action pursuant to ORS 90.255.

I (we) ask that the plaintiff(s) not be awarded possession of the premises and that I (we) be awarded my (our) costs and disbursements and attorney fees, if applicable, or a prevailing party fee.

Date

Signature of defendant(s)

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